United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7125

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 76-7125

GERALD LIPSKY, executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a BOBBY DARIN) deceased,

Plaintiff-Appellant,

-against-

COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION; and STREET SONGS, INC.,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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Alley Music Corporation and
Street Songs, Inc.
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UNITED STATES COURT OF APPEALS
FILED
MAY 26 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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Final Order and Judgment granting defendants' motions to dismiss the Second Amended Unified Complaint with prejudice and without costs, dated February 13, 1976. . . . . A196

CIVIL DOCKET

UNITED STATES DISTRICT COURT

JUDGE KNAPP

70 Civil 3030

A1

Jury demand date:

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
WALDEN ROBERT CASSOTTO, also known as BOBBY DARIN vs. COMMONWEALTH UNITED CORPORATION a Delaware corporation; COMMONWEALTH UNITED MUSIC INC. a Delaware corporation; A. BRUCE ROZET OLIVER A. UNGER IRVING GOLDSTEIN SIDNEY KIBRICK RODNEY W. LOEB HOWARD MARTIN PETER GETTINGER BENJAMIN F. BRESLAUER THEODORE R. SAYERS N. CLARKSON EARL JR. DR. H. IGOR ANSOFF PETER HUANG GOTTFRIED von MEYERN HOHENBERG 3/16 Cause on transfer from U.S.D.C. Central District of California Their # 70-1920	For plaintiff: Patterson, Belknap & Webb One Wall St. NY 10005 WI 3-1300 30 Rockefeller Plaza New York, New York, 10020 For defendant: WHALEN O'NEILL & PILLON 420 Lexington Ave. New York 10017 (Martin)

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 5 mailed X	Clerk								
J.S. 6 mailed ✓	Marshal								
Basis of Action: S.E.C. Act of 1934	Docket fee								
	Witness fees								
Action arose at:	Depositions								

70 Civil 5030 Walden Robert Cassotto, vs. Commonwealth United Corp. et al A2

70 Civil 5030

JUDGE KNAPP

DATE	PROCEEDINGS	Date Ord Judgment
Nov.18-70	Filed order of The Judicial Panel on Multidistrict Litigation - for transfer of Central District of California Case No. 70-1920-DWW Walden Robert Cassotto a/k/a Bobby Darin v. Commonwealth United Corp. to this court.- Mailed letter.	
Nov. 30,70	Filed papers originally filed in U.S.D.C. Central Distirict of California, were this day filed; Complaint, Summons , etc. RECORD OF PROCEEDINGS SDNY	
Dec.30,70	Filed CUC Amended Answer to complaint.	
Jan.3,70	Filed ANSWER of Howard Martin to complaint.	WCC
Nov.30-70	Filed Practice and Procedure Order upon transfer pur. to 28 USC Sec.1407(a) McFadden,J.	
Aug.17-72	Filed stipulation and order substituting Patterson,Belknap & Webb as attys. for plaintiff in place and stead of Weissburg,Jacobs and Gerst of Los Angeles. McFadden, J.	
Dec.21-72	Filed Notice of Motion re: leave to file supplemental complaint and to add defts.	
Dec.21-72	Filed Notice of Motion re: leave to file amended complaint.	
Dec.27-72	Filed original Stipulation and Order of Transfer to this Court for all purposes.	
Jan.31-73	Filed Notice of Motion re: cross-move on the hearing of plaintiff's motion for an order dismissing complaint, etc. Oral argument is respectfully requested.	TUC&R
Jan.31-83	Filed Memorandum in opposition to Pltf's.motion for leave to replead.	"
Feb.16-73	Filed Affidavit of Walden Robert Cassotto in connection with the pending motions to amend and supplement the complaint filed in his behalf.	
Feb.16-73	Filed Plaintiff's Reply Memorandum.	
Feb.16-73	Filed copy of stipulation and order of transfer - for the convenience of the parties and witnesses and in the interest of justice, this action shall be transferred for ALL purposes to this court. So ordered. McFadden, J.	
Mar.6-73	Filed Commonwealth's Reply Memorandum.	
Mar.9-73	Filed Plaintiff's Memorandum in reply to Commonwealth's Reply Memorandum.(Docketed also in M 19-93).	
Oct.18-73	Filed pretrial order.McFadden,J.	
Nov.20-73	Filed Pltff's Amended Complaint And Supplemental Complaint.	
Nov.8,73	Filed Pltff's BERRY PETROLEUM COMPANY's,ET AL'SProposed Discovery Schedules.	
Nov.8-73	Filed Memorandum Re.Discovery Schedules.	
Nov.12-73	Filed Order:that the motion of Commonwealth United Corp. to Dismiss is DENIED.McFADDEN,J.	
Dec.3,73	Filed Pltff's Interrogatories to deft Commonwealth United Corp..	
Dec.3,73	Filed Pltff's Interrogatories to deft Commonwealth United Music,Inc.	
Dec.3.73	Filed Pltff's Notice of Motion and Motion for Unified Complaint.	
Dec.[illegible]	Filed [illegible] Substitution of Attorney,McFadden,J. [illegible]	
Feb.4,74	Filed Pltff's Notice of Change Address:30 Rockefeller Plaza,N.Y.,N.Y., 10020,Patterson, Belknap & Webb,	
Apr.9,74	Filed Pltff's Notice of Motion and Motion for Substitution of Plaintiff, Affidavit,Memorandum and proof of service.	
May.28,74	Filed Order,that a pretrial conference will be held in this matter at 11:30 A.M., E.D.T., June 11, 1974, U.S.Courthouse, 40 Center St., Foley,Sq., N.Y.,N.Y.,10007. MacFadden,Judge.	
Jul.29-74	Filed Order that Gerald Lipsky,executor of the will of Walden Robert Cassotto,deceased,formerly known as Bobby Darin, is hereby substituted as plaintiff in this action, as indicated,McFadden,J.	
Aug.6-74	Filed Amended Unified Complaint.	
Aug.29,74	Filed Deft's'. (Hudson Bay Music, et-al) notice of motion for injunction ,etc.--at a time and place to be fixed by the court.	
Sept.[illegible],74	Filed memorandum of law in support of motion to strike certain allegati	

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CIVIL DOCKET

3 McFadden, J. 70 Civil 5

DATE	PROCEEDINGS
[illegible]	Filed defts'. (Iota and Commonwealth) notice of motion to strike from the Amended Unified Complaint, certain allegations. Return date to be fixed by the court.
Sep.3,74	Filed defts'. Iota Industries Inc. et-ano memorandum in support of motion.
[illegible]	Filed Iota's answers to pltff's. interrogs.
[illegible]	Filed Com'l's answers to pltff's. interrogs.
Nov.6,74	Filed Plaintiff's memorandum in opposition to defendants' motions.
Nov.21,74	Filed defendants' (Iota Industries, et-al) reply memorandum in support of motion to strike.
Mar.10,75	Filed order that a pre-trial conference will be held in this case at 10:00 A.M. on 3/31/75, U.S. Courthouse, N.Y., N.Y. The court will hear oral argument on all pending motions at that time. Counsel should be prepared to discuss the case in minute detail, etc.--- McFadden, J. (Mailed Notices).
Mar.25,75	Filed Pltff., Gerald Lipsky's requests that Deft. (Commonwealth United Corp., now known as Iota Industries, Inc.,), et-al, admit, for the purposes of this action only, the truth of each of the statements indicated.
Mar.25,75	Filed Pltff's. requeststhat Defts. (Hudson Bay Music Co., & Alley Music Corp. & Street Songs, Inc. answer under oath in accordance with Rule 33 of F.R.C.P. the interrogatories as indicated.
Mar.25,75	Filed Pltff's. request that Defts. (Commonwealth United Corp. & Commonwealth United Music, Inc.) answer under oath in accordance with Rule 33 of F.R.C.P. the interrogatories as indicated.
Jul.15,75	Filed pre-trial conference order that Defts'. motions to strike, noticed 8/28/74 are granted in all respects and that Exhibit C and certain allegations are struck from Amended Unified Complaint as indicated, etc,-- McFadden, J.
Jul.30,75	Filed Pltff's. Second Amended Unified Complaint purauant to order dated 7/11/75.
Aug.28,75	Filed Defts'. (Hudson Bay Music Co. & Alley Music Corp. and Street Songs, Inc.) notice of motion dismissing Second Amended Unified Complaint pursuant to Rule 12(b) (6) F.R.C.P.- Return date and time to be fixed by court.
Aug.28,75	Filed Defts'. Hudson Bay Music Co., et-ano Memorandum of Law in support of motion to dismiss.
Aug.28,75	Filed Defts'. (Iota Industries & CUM) notice of motion dismissing Second Amended Unified Complaint, etc. pursuant to Rule 12(b) (6) of F.R.C.P.- Return date and time to be fixed by court.
Aug.28,75	Filed Defts'. (Iota & CUM) Memorandum in support of motion to dismiss
Sep.30,75	Filed affdvt. of Thomas Thacher -Re: Defts', motions directed to Second Amended Unified Complaint.
Sep.30,75	Filed Pltff's. Memorandum in opposition to Defts'. motions to dismiss complaint for failure to state claim upon which relief can be granted
Oct.2,75	Filed order that a pre-trial conference be held in this case at 10:00 A.M. Wed.,10/15/75, U.S. Courthouse, Foley Sq., NYC., pursuant to Rule 16 F.R.C.P. and counsel should be prepared to discuss case in minute detail, as indicated.-- McFadden, J.
10/3/75	Filed transcript of pre-trial proceedings, dated 10/15,23,24, 1975-- McFadden, J.
Dec.11,75	Filed letter from Thomas Thacher -re: Problems appearing in the draft of Final Order and Judgment signed by the Defts. and Mr. Thacher's slightly revised counter-proposal.

(over)

DATE	PROCEEDINGS
[illegible] 17,76	Filed Final Order and Judgment granting motions of all Defts. to dismi Second Amended Unified Complaint, dismissing Second Amended Unified Complaint with prejudice and without costs as to all Defts., directing clerk to enter the foregoing as a final judgment and that Deft.(Iota Industries, Inc.) cause to be delivered to Pltff's. counsel the 10,000 shares of common stock of Iota according to the terms and conditions indicated.-- McFadden, J. Judgment Entered--- Clerk --- Mailed Notice ent.2/17/76.
[illegible]	Filed transcript of record of proceedings, dated 10/15/75.
Mar.16,76	Filed Pltff's. (Gerald Lipsky) Notice of Appeal to the U.S.C.A. for the Second Circuit from each and every part of the Order and Final Judgment entered 2/17/76. (Mailed Notices to Townley, Updike--Lord, Day & Lord--Iota Industries, Inc.--Commonwealth United Music, Inc. c/o Iota Industries, Inc.).
Mar. 16-76	Filed undertaking for Costs on appeal-Fireman's Fund.
*Jan 10-74	Filed stipulation and order that notice of motion dated Nov. 30-73, for leave to file Unified Complaint and related relief, shall be granted on consent subject to terms and conditions set forth in the stipulation.
*Sept 4-74	Filed Schedule of documents as to which attorney-client privilege is claimed.

True Copy Certified, Burghard Clerk

A5

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FILED
AUG 27 1970
CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

DISTRICT COURT OF THE UNITED STATES

CENTRAL DISTRICT OF CALIFORNIA

SDNY 70 Civ 5030

WALDEN ROBERT CASSOTTO, also known as BOBBY DARIN,

Plaintiff,

vs.

COMMONWEALTH UNITED CORPORATION, a Delaware corporation; COMMONWEALTH UNITED MUSIC, INC., a Delaware corporation; A. BRUCE ROZET; OLIVER A. UNGER; IRVING GOLDSTEIN; SIDNEY KIBRICK; RODNEY W. LOEB; HOWARD MARTIN; PETER GETTINGER; BENJAMIN F. BRESLAUER; THEODORE R. SAYERS; N. CLARKSON EARL, JR.; DR. H. IGOR ANSOFF; PETER HUANG; and GOTTFRIED von MEYERN-HOHENBERG,

Defendants.

NO. 70-1920-DWW

COMPLAINT

RESCISSION, BREACH OF CONTRACT AND FRAUD

U.S. DISTRICT COURT
FILED
NOV 30 1970
S. D. OF N.Y.

COMES NOW the plaintiff, and for a first cause of action against defendants, and each of them, alleges as follows:

FIRST CAUSE OF ACTION

1.

Jurisdiction of this cause of action is based upon Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. §78a(a)), Section 22(a) of the Securities Act of 1933 (15 U.S.C. §77v(a)) and on the principles of pendent jurisdiction. This cause of action arises under Section 17(a) of the Securities Act of 1933 (15 U.S.C. §77a(a)), Sections 10(b) and 14(a) of

the Securities Exchange Act of 1934 (15 U.S.C. §78j(b), §78n(a)), the rules and regulations of the Securities and Exchange Commission promulgated under both acts and common law principles.

2.

Plaintiff is informed and believes and thereon alleges that at all times mentioned herein each of the defendants was the agent, servant and employee of the remaining defendants, and each of them, and was acting within the time, purpose, course and scope of said agency and employment, and acting with the express and implied knowledge and consent of the remaining defendants, and each of them.

3.

At all times herein mentioned, defendant COMMONWEALTH UNITED CORPORATION (hereinafter referred to as "CUC") was and still is a corporation organized and existing under and by virtue of the laws of the State of Delaware, transacting business in the County of Los Angeles, State of California.

4.

At all times herein mentioned, defendant COMMONWEALTH UNITED MUSIC, INC. (hereinafter referred to as "CUM") was and still is a corporation organized and existing under and by virtue of the laws of the State of Delaware, transacting business in the County of Los Angeles, State of California.

5.

At all times herein mentioned, defendant A. BRUCE ROZET was Chairman of the Board of Directors, President, Chief Executive Officer and a Director of defendant CUC.

6.

At all times herein mentioned, defendant OLIVER A. UNGER was Vice Chairman of the Board of Directors, and a Director of defendant, CUC.

/////

7.

At all times herein mentioned, defendant IRVING GOLDSTEIN was Executive Vice President, Treasurer and a Director of defendant CUC.

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8.

At all times herein mentioned, defendants RODNEY W. LOEB, SIDNEY KIBRICK, and HOWARD MARTIN were Vice Presidents of defendant CUC.

9.

At all times herein mentioned, defendant PETER GETTINGER was Secretary and a Director of defendant CUC.

10.

At all times herein mentioned, defendants THEODORE R. SAYERS, N. CLARKSON EARL, JR., DR. H. IGOR ANSOFF, PETER HUANG, and GOTTFRIED von MEYERN-HOHENBERG were Directors of defendant CUC.

11.

Plaintiff is informed and believes, and based upon such information and belief alleges that at all times herein mentioned, T. M. MUSIC, INC. (hereinafter referred to as "T. M.") was and still is a corporation organized and existing under and by virtue of the laws of the State of New York, transacting business in the County of Los Angeles, State of California. Further, at all times herein mentioned, T. M. owned all of the outstanding shares of the stock of TOWNE MUSIC CORP., a New York corporation, and DOMITCH MUSIC, INC., a New York corporation; and T. M. owned three foreign subsidiary corporations: T. M. MUSIKVERLAG, G. M. B. H., a German corporation; T. M. MUSIC (Australia) Pty. Ltd., an Australian corporation; and T. M. MUSIC LIMITED, a British corporation.

/////

12.

At all times herein mentioned, T. M. was in the business of, among other things, publishing musical compositions written by plaintiff and other individuals. The assets of T. M. included, among other things, all right, title and interest in and to musical compositions and copyrights, renewal copyrights, and extensions therein; licenses to publish musical compositions; exclusive song writer contracts; mechanical rights in and to musical compositions; and a contract for the administration of a catalog of musical compositions.

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13.

On or about August 20, 1968, plaintiff and defendants CUC and CUM entered into a written contract by the terms of which defendant CUM agreed to acquire from plaintiff all of the issued and outstanding shares of capital stock of T. M. by issuing solely in exchange therefor shares of capital stock of defendant CUC, which shares had a par value of One Dollar ($1.00) per share. A true copy of said contract is attached hereto as Exhibit "A" and made a part hereof by this reference as though set forth in full at this point.

14.

Pursuant to the provisions of said contract, and specifically paragraph 10.2 thereof, defendant CUM delivered to plaintiff on the closing of the plan of reorganization contemplated under said contract, 77,327 shares of capital stock of defendant CUC, having an aggregate market value closely equaling $1,300,000.00. As a result of said contract, and the plan of reorganization contemplated thereunder, plaintiff acquired said securities of defendant CUC during the period complained of herein.

/////

15.

At all times pertinent to the complaint, securities of defendant CUC, including convertible debentures, convertible preferred, warrants and shares of stock, were listed and traded on the American Stock Exchange, a national securities exchange, except for the period after July 22, 1969, when the American Stock Exchange suspended trading in Commonwealth stock and convertible debentures on said exchange. On that date, the common stock of defendant CUC was traded on the American Stock Exchange at $8.125, convertible debentures of defendant CUC were traded at a price of $67.00 and defendant CUC preferred was traded at a price of $16.25.

16.

On or about August 1, 1969, the Securities and Exchange Commission directed that over-the-counter trading in defendant CUC be suspended. On that date, the over-the-counter high and low bids for the common stock of defendant CUC were $4.75 and $4.25, respectively.

17.

On or about December 23, 1969, over-the-counter trading in the common stock of defendant CUC was resumed, at which time the over-the-counter price of the common stock of defendant CUC was as low as $1.50 bid, $2.50 asked. As of the date of this complaint, the over-the-counter price of the common stock of defendant CUC is approximately $ .50 bid, $ .75 asked.

18.

Beginning in 1967, and thereafter, defendants, acting in close concert and conspiracy, embarked upon a course of self-dealing, entered into financial transactions which had no legitimate business purpose, disseminated false information, withheld material information, and "dressed-up"

the financial statements of defendant CUC, all of which artificially manipulated and influenced, and was designed to so manipulate and influence, the market price of defendant CUC's securities.

19.

During the period commencing on January 1, 1967, and continuing to and including December 31, 1968, defendant CUC failed to disclose material facts and continued to disseminate and release financial information concerning defendant CUC which was materially false and misleading. Said omissions and materially false and misleading information was contained in, among other things, an annual report of defendant CUC for 1967.

20.

The failure to disclose the truth concerning defendant CUC's financial condition had the effect of causing defendant CUC's securities to trade at artificially inflated market prices.

21.

Plaintiff, in acquiring his shares of common stock of defendant CUC, was misled to his damage and loss by the artifically inflated market prices thereof at the time of such acquisition.

22.

The defendants, and each of them, knew or should have known that the annual report referred to herein would be relied upon by defendant CUC's security holders and the financial community and the public in connection with purchases of defendant CUC's securities.

23.

Defendants, and each of them, approved, authorized and/or acquiesced in the false and misleading statements herein

complained of and/or otherwise aided and abetted in the implementation of the wrongs complained of herein.

24.

The acts and transactions complained of herein were effected by the means and instrumentalities of interstate commerce or the mails.

25.

Many of the acts and transactions constituting the violation occurred in the Central District of California.

SECOND CAUSE OF ACTION

For a second, separate and distinct cause of action against defendants, and each of them, plaintiff alleges as follows:

26.

Plaintiff repeats and realleges each and every allegation set forth in paragraphs 2 through 14, inclusive, of the first cause of action herein, as though at this point set forth in full.

27.

Under the terms of said contract, and specifically paragraph 14 thereof, defendant CUC agreed that during the year 1968 it would, at its own expense, take all necessary action to file and thereafter use its best efforts to cause to become effective a registration statement under the Securities Act of 1933, as amended, with respect to the shares of capital stock of defendant CUC to be issued and delivered to plaintiff upon the "closing" as that term is defined in paragraph 2 of said contract. The foregoing representations of defendant CUC were a material inducement for plaintiff to enter into said contract and but for said representations, plaintiff would not have entered into it.

A12

Defendant CUC failed to use its best efforts to comply with its representations set forth in paragraph 14 of said agreement and, specifically, failed to file the aforesaid registration statement in the year 1968 and further failed to use its best efforts during the year 1968 to cause such registration statement to become effective with respect to the shares of capital stock of defendant CUC issued and delivered to plaintiff under the terms of said contract.

29.

During the early part of the year 1969, plaintiff learned of the failure of defendant CUC to cause the aforesaid registration statement to become effective in the year 1968. A registration statement covering the shares of capital stock of defendant CUC issued and delivered to plaintiff was subsequently filed with the Securities and Exchange Commission on or about April 29, 1969, but such registration statement has not become effective with respect to the shares of capital stock of defendant CUC issued and delivered to plaintiff. At the time plaintiff learned of the failure of defendant CUC to file and thereafter cause to become effective such registration statement in the year 1968, and for the period of time thereafter, to and including the time of the filing of this complaint, defendants, and each of them, expressed their assurances to plaintiff that the aforesaid registration statement filed on or about April 29, 1969, would be caused to become effective. As a result of the foregoing assurances, plaintiff withheld action to rescind the said contract until the filing of the complaint herein.

30.

Plaintiff is informed and believes, and based upon such information and belief alleges, that the financial informatio

concerning defendant CUC presented to plaintiff prior to his entering into said contract, which said financial information was contained in financial statements and an annual report of defendant CUC for the year 1967, and which said financial information was a material inducement to plaintiff entering into said contract, was materially false and misleading. The failure of defendants, and each of them, to disclose the truth concerning defendant CUC's financial condition had the further effect of causing the securities of defendant CUC to be traded at artificially inflated market prices at the time plaintiff entered into said contract and at the time of the closing under the terms of said contract.

A13

31.

As a further material inducement for plaintiff to enter into said contract, defendants, and each of them, offered plaintiff an exclusive songwriter's agreement with a subsidiary corporation of defendant CUC. In entering into such an agreement, defendants, and each of them, assured plaintiff that he would actively perform songwriting duties for projects of said subsidiary of defendant CUC for a period of three years. As a result of such representations of defendants, and each of them, plaintiff did enter into an exclusive songwriter's agreement with Chardon Music, Inc. Said exclusive songwriter's agreement became effective upon the closing under the terms of the contract attached hereto as Exhibit "A", pursuant to a letter agreement of August 20, 1968, by and between Chardon Music, Inc. and Marvin Sears, attorney for plaintiff on said date. By the terms of said exclusive songwriter's agreement, plaintiff has been and is obligated from the effective date thereof for a period of three years thereafter to assign, transfer and deliver to said subsidiary of defendant CUC all of his musical compositions written by

plaintiff during said period of time.

32.

Defendants, and each of them, have failed to provide the projects in which plaintiff was assured the opportunity of creating musical compositions as aforesaid. Furthermore, defendants, and each of them, have failed to use their best efforts to exploit the musical compositions of plaintiff assigned to said subsidiary of defendant CUC, pursuant to the terms of said exclusive songwriter's agreement.

33.

From and after the effective date of said exclusive songwriter's agreement as aforesaid to the present, defendants, and each of them, expressed their assurances to plaintiff (a) that defendants, and each of them, would provide projects in which plaintiff would be able to create musical compositions, and (b) that defendants, and each of them, would use their best efforts to exploit the musical compositions of plaintiff assigned to the aforesaid subsidiary of defendant CUC. As a result of the foregoing assurances, plaintiff withheld action to rescind the said exclusive songwriter's agreement until the filing of the complaint herein.

34.

Plaintiff has performed all conditions, covenants, and promises under said contract attached hereto as Exhibit "A" and said exclusive songwriter's agreement, on his part to be performed.

35.

Plaintiff intends service of summons of this complaint to serve as notice of rescission of said contract attached hereto as Exhibit "A" and said exclusive songwriter's agreement, and hereby offers to restore all consideration furnished by defendants, and each of them, under said contracts,

on condition that defendants, and each of them, restore to him the consideration furnished by plaintiff.

36.

Plaintiff will suffer irreparable and substantial harm if the consideration furnished by him is not restored, in that (a) as a result of the failure of defendant CUC to file and thereafter use its best efforts to cause to become effective in 1968 a registration statement, as more particularly described above, plaintiff was deprived of the opportunity of selling the shares of capital stock of defendant CUC received by him upon the closing under the terms of said contract attached hereto as Exhibit "A" at a price substantially equivalent to the market value of said shares at the time of the closing under the terms of said contract; (b) as a result of the actions of defendants, and each of them, in disseminating and releasing said financial information concerning defendant CUC which was materially false and misleading, the value of the shares of common stock of defendant CUC have declined to a present over-the-counter price of approximately $ .50 bid, $ .75 asked, for which shares there is no market; and (c) as a result of the failure of defendants, and each of them, in exploiting the musical compositions of plaintiff produced under the terms of said exclusive songwriter's agreement and as a result of the failure of defendants, and each of them, in not providing projects in which plaintiff may perform his services as songwriter under said agreement, plaintiff has been deprived of the opportunity to practice his profession of songwriting and has consequently been deprived of an income therefor.

37.

Rescission of the contract attached hereto as Exhibit "A" and the said exclusive songwriter's agreement

will not adequately compensate plaintiff since defendants, and each of them, have allowed the assets of T. M. to decline in value as a result of their failure to exploit such assets in a proper manner; and further, since defendants, and each of them, have deprived plaintiff of the opportunity of practicing his profession of songwriting from the effective date under said exclusive songwriter's agreement to the present time with a resulting loss and income therefrom. Therefore, plaintiff has been damaged in the further sum of $1,000,000.00 which plaintiff demands in addition to the restoration of all consideration transferred by plaintiff under said contract attached hereto as Exhibit "A" and said exclusive songwriter's agreement.

THIRD CAUSE OF ACTION

For a third, separate and distinct cause of action against defendants, and each of them, plaintiff alleges as follows:

38.

Plaintiff repeats and re-alleges each and every allegation of paragraphs 2 through 14, inclusive, of the first cause of action herein, and paragraphs 27, 28, 30, 31, 32, and 34 of the second cause of action herein, as though set forth in full at this point.

39.

During the early part of the year 1969, plaintiff learned of the failure of defendant CUC to cause the aforesaid registration statement to become effective in the year 1968. A registration statement covering the shares of capital stock of defendant CUC issued and delivered to plaintiff was subsequently filed with the Securities and Exchange Commission on or about April 29, 1969, but such registration statement has not become effective with respect to the shares of capital

stock of defendant CUC issued and delivered to plaintiff. At the time plaintiff learned of the failure of defendant CUC to file and thereafter cause to become effective such registration statement in the year 1968, and for the period of time thereafter, to and including the time of the filing of this complaint, defendants, and each of them, expressed their assurances to plaintiff that the aforesaid registration statement filed on or about April 29, 1969, would be caused to become effective. As a result of the foregoing assurances, plaintiff withheld action for breach of said contract until the filing of the complaint herein.

40.

From and after the effective date of said exclusive songwriter's agreement as aforesaid, to the present, defendants, and each of them, expressed their assurances to plaintiff (a) that defendants, and each of them, would provide projects in which plaintiff would be able to create musical compositions, and (b) that defendants, and each of them, would use their best efforts to exploit the musical compositions of plaintiff assigned to the aforesaid subsidiary of defendant CUC. As a result of the foregoing assurances, plaintiff withheld action for breach of said exclusive songwriter's agreement until the filing of the complaint herein.

41.

Defendants, and each of them, breached said contract attached hereto as Exhibit "A" by failing to use their best efforts to comply with the representations of defendant CUC set forth in paragraph 14 of said contract and, specifically, by failing to file the aforesaid registration statement in the year 1968 and further failing to use their best efforts during the year 1968 to cause such registration statement to become effective with respect to the shares of capital

stock of defendant CUC issued and delivered to plaintiff under the terms of said contract.

42.

Defendants, and each of them, breached said exclusive songwriter's agreement by failing to provide the projects in which plaintiff was assured the opportunity of creating musical compositions as aforesaid, and failing to use their best efforts to exploit the musical compositions of plaintiff assigned to the aforesaid subsidiary of defendant CUC, pursuant to the terms of said contract.

43.

As a result of said breaches of said contracts, plaintiff is in the possession of the aforesaid shares of capital stock of defendant CUC with no market value and plaintiff has been deprived of the opportunity to practice his profession of songwriting and has consequently been deprived of an income therefor, all to plaintiff's damage in the sum of $2,000,000.00.

FOURTH CAUSE OF ACTION

For a fourth, separate and distinct cause of action against defendants, and each of them, plaintiff alleges as follows:

44.

Plaintiff repeats and re-alleges each and every allegation of paragraphs 2 through 14, inclusive, of the first cause of action herein, and paragraphs 27, 28, 30, 31, and 32 of the second cause of action herein, as though set forth in full at this point.

45.

On or about August 20, 1968, defendants, and each of them, falsely and fraudulently represented to plaintiff that during 1968, defendant CUC would, at its own expense,

file and thereafter use its best efforts to cause to become effective a registration statement under the Securities Act of 1933, as amended, with respect to the shares of capital stock of defendant CUC, issued and delivered to plaintiff on the closing under the terms of said contract. Such representations were contained in paragraph 14 of the contract attached hereto as Exhibit "A".

46.

The representations so made by defendants, and each of them, were in fact false. The true facts were that defendant CUC did not intend to file such registration statement in the year 1968, and further that defendants, and each of them, knew or should have known, that defendant CUC would not use its best efforts to cause said registration statement to become effective within the period of time contemplated by the parties under the terms of the contract attached hereto as Exhibit "A".

47.

During the period commencing on January 1, 1967, and continuing to and including December 31, 1968, defendants, and each of them, failed to disclose material facts and continued to disseminate and release financial information concerning defendant CUC which was materially false and misleading. Said omissions and materially false and misleading information was contained in, among other things, an annual report of the defendant CUC for 1967.

48.

On or about August 20, 1968, defendants, and each of them, falsely and fraudulently represented to plaintiff that pursuant to the aforesaid exclusive songwriter's agreement, plaintiff would actively perform songwriting duties for projects of the aforesaid subsidiary of defendant CUC for a period of three years and that defendants, and each of them, would use

their best efforts to exploit the musical compositions of plaintiff assigned to said subsidiary pursuant to the terms of said exclusive songwriters agreement.

49.

The aforesaid representations made by defendants and each of them, with respect to said exclusive songwriters' agreement were in fact false. The true facts were that defendants, and each of them, did not intend to provide projects in which plaintiff would have the opportunity of creating musical compositions as aforesaid, and did not intend to use their best efforts to exploit the musical compositions of plaintiff assigned to said subsidiary of defendant CUC, pursuant to the terms of said exclusive songwriter's agreement.

50.

When defendants, and each of them, made the aforesaid representations, they, and each of them, knew them to be false; and such statements were made to plaintiff by defendants, and each of them, with the intent to defraud and deceive plaintiff and to induce him to act in the manner herein alleged.

51.

Said representations by defendants, and each of them, were material inducement to plaintiff in entering into said contract attached hereto as Exhibit "A" and said exclusive songwriter's agreement, and had plaintiff known the truth thereof, plaintiff would not have entered into said contracts.

52.

By reason of the facts alleged, plaintiff is now in the possession of the aforesaid shares of capital stock of defendant CUC which are valueless and has been deprived of the opportunity of practicing his profession of songwriting and consequently has been deprived of an income therefor, all to his damage in the sum of $2,000,000.00.

54.

In doing the things herein alleged, the defendants, and each of them, acted maliciously and were guilty of wanton disregard of the rights and feelings of plaintiff, and by reason thereof, plaintiff demands exemplary and punitive damages against defendants, and each of them, in the sum of $2,000,000.00.

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, jointly and severally, as follows:

1. On the first cause of action, for compensatory damages in the sum of $2,000,000.00, together with reasonable attorneys' and accountants' fees;

2. On the second cause of action, a determination by the court that said contract attached hereto as Exhibit "A" and said exclusive songwriter's agreement have been rescinded and an order directing the defendants, and each of them, to make restoration to plaintiff of the said consideration transferred by plaintiff, together with compensatory damages in the sum of $1,000,000.00;

3. On the third and fourth causes of action, compensatory damages in the sum of $2,000,000.00;

4. On the fourth cause of action, punitive damages in the sum of $2,000,000.00;

5. On all causes of action, costs of suit incurred herein; and

6. On all causes of action, such other and further relief as the court may deem just and proper.

WEISSBURG, JACOBS AND GERST

By _____
Stanley K. Jacobs
Attorneys for Plaintiff

EXHIBIT A

AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION dated August 20, 1968 (the "Plan"), by and among WALDEN ROBERT CASSOTTO, also known as BOBBY DARIN, c/o Marvin Sears, Suite 500, 1800 Avenue of the Stars, Los Angeles, California 90067 (the "Stockholder"), COMMONWEALTH UNITED MUSIC, INC., a Delaware corporation ("CUM") and COMMONWEALTH UNITED CORPORATION, a Delaware corporation ("CUC").

W I T N E S S E T H:

WHEREAS, the Stockholder owns all of the issued and outstanding capital stock of T. M. Music, Inc., a New York corporation with principal offices at 1619 Broadway, New York, New York ("TM"); and

WHEREAS, CUM and the Stockholder desire to adopt a plan of "reorganization" as defined in Section 368(a)(1)(B) of the Internal Revenue Code of 1954, as amended, on the terms and conditions hereinafter set forth, under which CUM will acquire from the Stockholder all of the issued and outstanding shares of capital stock of TM (the "TM Stock") by issuing solely in exchange therefor shares of CUC capital stock, par value $1.00 per share (the "CUC Stock");

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

BEST COPY AVAILABLE

1. EXCHANGE

On the terms and subject to all of the conditions herein and upon the performance by the parties hereto of their respective obligations hereunder, the Stockholder shall assign, transfer and deliver to CUM on the Closing Date (as that term is defined in Section 2 hereof), free and clear of all liens, pledges, encumbrances, claims, charges, agreements, rights, options, warrants or restrictions of any kind, nature or description, and CUM shall acquire from the Stockholder on said date, all of the TM Stock in exchange for the number of shares of CUC Stock set forth in Section 10 of the Plan, free and clear of all liens, pledges, encumbrances, claims, charges, agreements, rights, options, warrants or restrictions of any kind, nature or description except as set forth in Section 6 of the Plan.

2. CLOSING AND CLOSING DATE

The exchange referred to in Section 1 (the "Closing") shall take place at such place as shall be designated by CUM at 10:00 A.M. on August 30, 1968, or at such other date and such other place as shall be fixed by mutual consent of the parties hereto, provided however, that in the event that each of the conditions set forth in Sections 8 and 9 of the Plan shall not have been satisfied or waived by the party for whose benefit such condition shall have been given, the Closing shall take place on the fifth business day following the satisfaction or waiver of all such conditions. The time and date of the Closing is referred to herein as the "Closing Date". The Closing shall be no later than October 15, 1968.

3. REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDER

Except as otherwise specifically disclosed in the Plan or in any Schedule, the Stockholder represents and warrants as follows:

3.1 TM is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, and is qualified to do business and is in good standing in all jurisdictions in which such qualification is necessary because of the character of the properties owned by it or the nature of its activities and has full power and authority, corporate and otherwise, to carry on its business as now conducted and to own or lease and to operate its properties and assets now owned or leased and operated by it.

3.2 The authorized capital stock of TM consists of 200 shares of common stock, without par value, of which 200 shares are issued and outstanding. All of the outstanding shares of TM Stock are duly authorized, fully paid and non-assessable and all applicable federal and state documentary stamps, both original issue and transfer, required to be purchased and affixed, have been purchased and affixed. There are no outstanding subscriptions, options, warrants, rights or other agreements obligating TM to issue any additional shares of its capital stock.

3.3 The Stockholder owns of record and beneficially all of the outstanding shares of TM Stock, free and clear of all liens, pledges, encumbrances, claims, charges, agreements,

rights, options, warrants or restrictions of any kind, nature or description. The Stockholder is of full age and has full right, power, legal capacity and authority to enter into the Plan and to perform his obligations hereunder. The Plan has been duly executed and delivered by the Stockholder and constitutes his valid and legally binding agreement and obligation and the execution and delivery of the Plan and the consummation of the transactions contemplated herein do not and will not conflict with or result in a breach of any condition or provision of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon the TM Stock or upon any of the properties or assets of TM, by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which TM or the Stockholder, or either of them, is a party or which is or purports to be binding upon TM or the Stockholder or which affects or purports to affect any of the property or assets of TM. No action by any federal, state, municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make the Plan a valid instrument binding upon the Stockholder in accordance with its terms.

3.4 TM has no subsidiaries, including companies in which less than 100% of the stock is owned (nor do any of such subsidiaries have any subsidiaries), except as set forth on Schedule A. The corporations listed on Schedule A are collectively referred to as the "Subsidiaries". Schedule A indicates, with respect to each of the Subsidiaries, its name,

jurisdiction of incorporation, outstanding capital stock, the amount of outstanding capital stock owned by TM or by one of the Subsidiaries, and the name of the owner of the balance of such outstanding capital stock. Each of the Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the state or other jurisdiction in which it is incorporated. Each of the Subsidiaries (other than Foreign Subsidiaries) is qualified to do business and is in good standing in all jurisdictions in which such qualification is necessary because of the character of the properties owned by it or the nature of its activities. Each of the Subsidiaries (other than the Foreign Subsidiaries) has full power and authority, corporate and otherwise, to carry on its business as now conducted and to own or lease and to operate its properties and assets now owned or leased and operated by it. The capital stock of each Subsidiary indicated on Schedule A as being owned by TM or by a Subsidiary is duly authorized, fully paid and non-assessable and is owned free and clear of all liens, pledges, encumbrances, claims, charges, agreements, rights, options, warrants or restrictions of any kind, nature or description, subject to the agreements referred to on Schedule F and, subject to such agreements, may be freely assigned, sold, or otherwise disposed of. None of the Subsidiaries has any outstanding subscriptions, options, warrants, rights or other agreements obligating it to issue any additional shares of its capital stock. (The corporations listed on Schedule A which are incorporated in a jurisdiction other than a state of the United States are

sometimes hereinabove or hereinafter referred to as "Foreign Subsidiaries". TM and the corporations listed on Schedule A, excluding Foreign Subsidiaries, are sometimes hereinabove or hereinafter referred to collectively as the "TM Domestic Companies".) None of the Foreign Subsidiaries are in default in respect of any agreement with any of the TM Domestic Companies and none of the Foreign Subsidiaries own or control any copyrights except copyrights in respect of compositions listed in Schedule H-1.

3.5 Schedule B consists of a combined balance sheet of the TM Domestic Companies at December 31, 1967 and a combined statement of income of the TM Domestic Companies for the year then ended. Such statements are unaudited but have been prepared by Gerald Miller & Company, TM's independent certified public accountants. Schedule C consists of a combined balance sheet of the TM Domestic Companies at June 30, 1968 (the "Balance Sheet") and a combined statement of income of the TM Domestic Companies for the six months then ended (the "Income Statement"). Such statements are unaudited but have been prepared by Gerald Miller & Company. The financial statements comprising Schedules B and C fairly present the combined financial condition of the TM Domestic Companies at their respective dates, and the combined results of operations of the TM Domestic Companies for the periods covered thereby, and have been prepared in accordance with generally accepted accounting principles consistently applied. At June 30, 1968, neither TM nor any of the Subsidiaries (excluding Foreign Subsidiaries) had any liabilities or obligations of any kind,

contingent or otherwise, which are not reflected in the Balance Sheet or in Schedule D. Schedule C-1 consists of a balance sheet at December 31, 1966 and statement of income for the year then ended of T. M. Musikverlag GMBH, Schedule C-2 consists of a balance sheet at December 31, 1967 and statement of income for the year then ended of T. M. Music Limited, and Schedule C-3 consists of a balance sheet at June 30, 1967 and statement of income for the year then ended of T. M. Music (Australia) Pty., Limited, being all of the Foreign Subsidiaries. Such financial statements fairly present the financial condition of each such Foreign Subsidiary as of such dates and the results of operations for the periods covered thereby.

3.6 Except as set forth in Schedule E, since June 30, 1968, there has been no material adverse change in the financial condition, assets, liabilities, properties or business of TM or any of the Subsidiaries or in their title to any of their assets or properties, and neither TM nor any of the Subsidiaries has (i) issued or sold any stocks, notes, bonds or other corporate securities or options to purchase the same, or entered into any agreements in respect thereof; (ii) declared, set aside or made (or become obligated for) any payment or distribution in respect of any shares of its capital stock of directly or indirectly redeemed, purchased or acquired (or become obligated to redeem, purchase or acquire) any shares of such stock, or made (or become obligated to make) any loans or advances to any shareholder or employee; (iii) incurred any damage, destruction or similar loss, whether or not covered by insurance, affecting its property or business; (iv) incurred any obligation or liability (absolute or contingent), except current liabilities incurred in the ordinary course of business or paid any liability (absolute or contingent)

other than current liabilities theretofore incurred in the ordinary course of business; (v) sold, assigned or transferred any patents, trademarks, trade names, copyrights, licenses, franchises or other assets or properties (tangible or intangible) except in the ordinary course of business; (vi) mortgaged, pledged or granted or suffered any lien or other encumbrance or charge on any of its assets or properties, tangible or intangible; (vii) waived any rights of any value or cancelled any debts or claims; (viii) entered into any transactions other than in the ordinary course of business; (ix) made any changes in compensation payable to officers or directors or any material increases in compensation of other employees; or (x) suffered any other event or condition of any character materially adverse to its financial condition, assets, liabilities, business or property.

3.7 The TM Domestic Companies have duly filed all federal, state, county and local income, excise and other tax returns and reports required in the opinion of counsel to TM to have been filed up to the date hereof. All such returns are true and correct in all material respects and the TM Domestic Companies have paid all taxes, interest and penalties shown on such returns or reports or claimed to be due to any federal, state, county, local or other taxing authority. The TM Domestic Companies have paid or made adequate provision in the Balance Sheet for all taxes payable on or prior to and with respect to all periods ending on or prior to June 30, 1968. None of the TM Domestic Companies has any liability for any federal, state, county or local income, excise or other

taxes, interest or penalties of any nature whatsoever other than those shown on the Balance Sheet and other than liabilities for taxes which may have accrued since June 30, 1968, in the ordinary course of business.. True copies of the federal income tax returns of the TM Domestic Companies for the three years ended December 31, 1967 have been initialled by the Stockholder and delivered to CUM accompanied by copies of all communications and other correspondence from the Internal Revenue Service relating to the periods covered by such returns. None of the TM Domestic Companies has any liability whatsoever for any taxes of any nature which may be imposed upon any of the Foreign Subsidiaries.

3.8 TM and the Subsidiaries own and have good and marketable title to all of their respective assets and properties, including without limitation, all of the assets and properties reflected in the Balance Sheet, free and clear of any mortgage, pledge, lien, conditional sales or other agreement, lease, encumbrance, right, contract or charge of any nature except (i) to the extent stated or reserved against on the Balance Sheet and for changes occurring in the ordinary course of business after June 30, 1968, none of which changes are adverse; and (ii) as set forth in Schedule F.

3.9 Neither TM nor any of the Subsidiaries is a party to or has any contract or commitment of any kind or nature whatsoever, including without limitation, any lease, license, franchise, employment, consultant or commission agreement or pension, profit-sharing, bonus, stock purchase, retirement, hospitalization, insurance or other plan or

arrangement involving employee benefits, contract with any labor union or contract for services, materials, supplies or equipment or for the sale or purchase of any of its products, assets or services, except (i) mechanical reproduction licenses other than blanket mechanical licenses, (ii) songwriter agreements other than agreements by songwriters to perform services over a period of time and other than agreements covering more than one song, (iii) contracts and commitments set forth in Schedule G, true copies of which have been delivered by the Stockholder to CUM, and (iv) employment contracts terminable on not more than two weeks notice. Each of the contracts and commitments referred to herein or in Schedule G is valid and existing, in full force and effect and enforceable in accordance with its terms and no party thereto is in default and no claim of default by any party has been made or is now pending and there does not exist any event which with notice or the passing of time or both would constitute a default or would excuse performance by any party thereto.

3.10 With respect to the Schedules which together comprise Schedule H:

3.10.1 Schedules H-1 and H-2 set forth for TM (including Argent Music Inc.) and for Towne Music Corp. ("Towne") (each such corporation hereinafter called a "Publisher" and collectively the "Publishers") (i) the titles of all of the musical compositions (the "Compositions") in which the respective Publisher owns any interest as publisher and (ii) the names of the composers and lyricists of the Compositions.

(a) All such information in Schedules H-1 and H-2 is true, accurate and complete in all material respects. Except where otherwise specifically indicated on Schedule H-1 or H-2, the Publisher owns 100% of the interest in each of the Compositions.

(b) TM is affiliated with BMI. Towne is affiliated with ASCAP.

(c) Subject to outstanding licenses which are disclosed in the Plan or in a Schedule, each of the Publishers owns, legally and beneficially, the copyright and the right to secure copyright throughout the world in each of the Compositions listed for it in Schedule H. Each of the Compositions which has heretofore been recorded has been duly registered for copyright in the United States Copyright Office in the name of the Publisher referred to in Schedule H as the owner of such Composition (or if not registered in the name of such Publisher, has been assigned of record to such Publisher by the person or firm in whose name registration was effected), and a Notice of Use for each such recorded Composition has been duly filed in the United States Copyright Office.

(d) Each of the composers and lyricists listed in Schedule H has been fully paid all of the consideration due him as of the date hereof from the applicable Publisher in respect of each Composition for which he is listed as a writer, except for royalties accrued

as shown on the Balance Sheet and except for royalties payable in respect of income which was not reported to or received by any of the Publishers at June 30, 1968.

(e) The rights of each Publisher with respect to all Compositions listed for it in Schedule H are free and clear of all liens, charges, claims, agreements, rights, options, warrants or restrictions of any kind, nature or description; except for (i) the royalties referred to in subsection (d) above; (ii) assignment of performing rights to the applicable performing rights society referred to in subsection 3.10.1(b) above; (iii) outstanding rights under the agreement referred to in subsection 3.10.6 below; (iv) the non-exclusive mechanical reproduction licenses granted to the recording companies listed in Schedule H; and (v) the synchronization licenses referred to in subsection 3.10.7 below.

(f) The aggregate of the mechanical royalties payable to composers and lyricists in respect of each Composition referred to in Schedule H does not exceed 50% of the total mechanical royalties in respect of such Composition.

(g) None of the Compositions referred to on Schedule H infringes upon the common law rights or the copyright or the literary, dramatic, motion picture or musical rights or the trademark or trade name of any party nor does it nor will it violate the

private, civil or property rights or the right of privacy or any other right of any person whomsoever.

3.10.2 Schedule H-3 sets forth a true, accurate and complete list of all agreements among the Publishers and the composers and lyricists named thereon who have agreed to render their exclusive services to such Publishers, setting forth the date and term of each such agreement. Schedule H-4 sets forth a true, accurate and complete list of all composers, lyricists and publishers to whom the Publishers have paid any advances which have not been fully recouped as at June 30, 1968, and the amount of such unearned advances with respect to each such writer at such date.

3.10.3 Schedule H-5 sets forth a true, accurate and complete list of all agreements (under which obligations are still outstanding) between TM, the Subsidiaries and any recording or record distributing company pursuant to which TM or any of the Subsidiaries have agreed to produce recordings for such company, true copies of which have been delivered by the Stockholder to CUM. Neither TM nor any of the Subsidiaries has any obligation to repay any production costs, advances or royalties which may have been or may hereafter be paid to them or for their account pursuant to any such agreement, except out of royalties.

3.10.4 Neither TM nor any of the Subsidiaries has received or accepted any cash advances against mechanical or production royalties which have not been fully earned, except as set forth on Schedule H-6. Except for non-recoupable

advances of subpublishing royalties received prior to April 22, 1960, none of the Publishers has accepted or received any cash advances against performing rights royalties or printing or subpublishing royalties which have not been fully earned, except as set forth on Schedule H-7.

3.10.5 As of the date hereof, performing rights royalty statements have been received from the applicable performing rights society for each of the Publishers to the date set forth opposite its name below.

(a) TM - Quarter Ended December 31, 1967

(b) Towne - Quarter Ended December 31, 1967

3.10.6 The only agreements relating to or affecting the Compositions listed in Schedule H for any territory outside of the United States are those certain agreements listed on Schedule H-8. Except for Item 1 on said Schedule H-8, true copies of such agreements have been delivered by the Stockholder to CUM.

3.10.7 The Publishers, or some of them, have entered into agreements with Harry Fox, as agent and trustee, authorizing said agent and trustee to grant synchronization and mechanical reproduction licenses in the Compositions. True copies of the said agreements together with all amendments thereto have been delivered to CUM. Schedule H-9 is a true, accurate and complete list of all synchronization and mechanical reproduction licenses which have been granted by the Publishers rather than by Harry Fox.

3.10.8 Schedule H-10 sets forth a true, accurate and complete list of each Composition in which any

Foreign Subsidiary owns any interest.

3.10.9 None of the rights or interests of TM or of any of the Subsidiaries referred to in this Section 3.10 or Schedule H is subject to termination or otherwise affected by the Plan or the performance thereunder of the respective obligations of the parties thereto.

3.11 Schedule I is a true and complete list, brief description and expiration dates of all insurance policies. All of such policies are valid and binding and in full force and effect as of the date hereof.

3.12 Except as listed and briefly described in Schedule J, there are no actions, suits or arbitration proceedings pending or, to the knowledge of the Stockholder, threatened against or affecting TM or any of the Subsidiaries, at law or in equity in any court, or before any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality. Neither TM nor any Subsidiary is in default with respect to any judgment, order, writ, injunction or decree in any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality.

3.13 TM and each of the Subsidiaries have complied with all statutes, regulations, rules and orders of all

federal, state, municipal and other governmental departments, commissions, boards, bureaus and agencies relating to or affecting the conduct of their respective businesses or the maintenance of their respective properties, including without limitation, all statutes, regulations, rules and orders relating to the employment of labor. There are no controversies pending or threatened between TM or any Subsidiary and any of their respective employees and neither TM nor any Subsidiary has suffered or sustained any labor dispute resulting in any work stoppage.

3.14. Except as set forth in Schedule K, and except for companies listed on a national securities exchange, neither the Stockholder nor any member of his family owns, directly or indirectly for his benefit or for the benefit of any such family member, individually or collectively, any interest in any corporation, partnership, firm or association which (i) is a competitor, customer or supplier of TM or any of the Subsidiaries, or (ii) has any existing contractual relationship with TM or any of the Subsidiaries, or any interest in any of the assets, properties or rights owned by TM or any of the Subsidiaries or which is used by any of them in their respective businesses. Except as set forth in Schedule L, neither TM nor any of the Subsidiaries is indebted to any of the foregoing persons and none of the foregoing persons is indebted to TM or any of the Subsidiaries. The interest of the Stockholder in TM constitutes the Stockholder's entire interest in the music publishing field.

3.15 No representation or warranty by the Stockholder in the Plan nor any documents, instruments, certificates or Schedule contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements or facts contained herein or therein not misleading.

3.16 Except as expressly herein otherwise provided, all of the representations and warranties of the Stockholder set forth herein shall be true on and as of the Closing Date as though such representations and warranties were made on and as of such time.

4. REPRESENTATIONS AND WARRANTIES OF CUC AND CUM

CUC and CUM hereby jointly and severally represent and warrant that each of them has all necessary power and authority, corporate and otherwise, to execute and deliver the Plan and to perform its obligations hereunder. The execution and delivery of the Plan and the performance by CUC and CUM of their obligations hereunder have been duly authorized by all requisite corporate action and no further action or approval is required in order to constitute the Plan as a binding and enforceable obligation of CUC and CUM. The execution and delivery of the Plan and the consummation of the transactions contemplated hereunder do not and will not violate any provision of law or the Certificate of

Incorporation or By-laws of CUC or CUM and will not conflict with or result in the breach of any condition or provision of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property or assets of CUC or CUM by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which CUC or CUM is a party or which is or purports to be binding upon CUC or CUM, or which affects or purports to affect any of the property or assets of CUC or CUM, and no action (other than action in respect of applications or filings with the American Stock Exchange for the listing of the CUC Stock and the Securities and Exchange Commission for the registration of the CUC Stock, all of which applications and filings CUC and CUM shall use their best efforts to cause to become effective at the earliest practicable time in accordance with the provisions of this agreement) by any federal, state, municipal or other governmental department, commission, board, bureau or instrumentality is necessary to make the Plan a valid instrument and binding upon CUC and CUM in accordance with its terms.

5. COVENANTS CONCERNING CONDUCT OF BUSINESS BY TM AND THE SUBSIDIARIES PENDING CLOSING AND CERTAIN OTHER MATTERS

The Stockholder covenants and agrees that between the date hereof and the Closing Date, unless otherwise authorized in writing by CUM:

5.1 Neither TM nor any of the Subsidiaries will:

5.1.1 Issue or sell any stocks, notes, bonds or other corporate securities, or options to purchase the same,

or enter into any agreements in respect thereof.

5.1.2 Declare, set aside or make (or become obligated for) any payment or distribution in respect of any shares of its capital stock or directly or indirectly redeem, purchase or acquire (or become obligated to redeem, purchase or acquire) any shares of such stock or make (or become obligated to make) any loans or advances to any shareholder or employee, or borrow any money.

5.1.3 Amend its Certificate of Incorporation or By-laws.

5.1.4 Incur any obligation or liability (absolute or contingent), except current liabilities and obligations incurred in the ordinary course of business, or pay any liability or obligation (absolute or contingent) other than obligations incurred in the ordinary course of business or current liabilities but no liability or obligation will be paid or satisfied by the creation of a new obligation or liability.

5.1.5 Sell, assign or transfer any of its tangible assets or any patent, trademark, trade name, copyright, license, franchise or other intangible asset or property, except in the ordinary course of business.

5.1.6 Mortgage, pledge or grant or suffer to exist any lien or other encumbrance or charge on any of its assets or properties, tangible or intangible, other than licenses granted in the ordinary course of business.

5.1.7 Waive any rights of any value or cancel any debts or claims without adequate consideration therefor. A41

5.1.8 Make any changes in compensation payable to officers or directors or any material increase in compensation payable to other employees.

5.2 TM and the Subsidiaries will maintain in force all policies of fire, liability and other forms of insurance listed in Schedule I.

5.3 TM and the Subsidiaries shall afford to the officers, attorneys, accountants and other authorized representatives of CUM, full access to the properties, books and records of TM and the Subsidiaries, at reasonable times, in order that CUM may have full opportunity to make such investigation as it shall desire of their respective affairs.

5.4 TM and the Subsidiaries shall use its best efforts to maintain and preserve its business organization intact, to retain its present employees, and to maintain its relationships with customers and others.

5.5 TM, the Subsidiaries and the Stockholder shall furnish to CUC and CUM such financial statements and other information as CUC and CUM shall reasonably require in connection with the preparation of material required to be filed with the Securities and Exchange Commission and the American Stock Exchange.

5.6 The agreement between TM and Edgar Burton referred to as Item 1 on Schedule G shall be cancelled and TM shall have been released from any and all obligations to Edgar Burton thereunder without cost to TM.

6. STOCKHOLDER'S COVENANT WITH RESPECT TO CUC STOCK

The Stockholder covenants and agrees that he will not sell, transfer, hypothecate or otherwise dispose of any shares of CUC Stock received by him pursuant to the Plan unless:

6.1 A registration statement under the Securities Act of 1933, as amended, shall be in effect with respect to such shares and such Stockholder shall have complied with all of the provisions of said Act and all applicable rules and regulations issued pursuant thereto, or

6.2 Such Stockholder shall have obtained an opinion of counsel, satisfactory to CUC in its sole and absolute discretion, to the effect that the proposed sale, transfer, hypothecation or other disposition is exempt from the registration requirements of said Act, or

6.3 A "no action letter" concerning the proposed sale, transfer, hypothecation or other disposition shall have been obtained from the Securities and Exchange Commission.

7. BROKERAGE

The Stockholder shall indemnify and hold CUC and CUM harmless from and against and in respect of any claims for brokerage, finder's fees or other commissions relating to the transactions contemplated hereby based in any way upon the acts of the Stockholder or upon agreements or arrangements or understandings made by the Stockholder with any other person or persons. CUC and CUM shall indemnify and hold the Stockholder harmless from and against and in

respect of any claim for brokerage, finder's fees or other commissions relating to the transactions contemplated hereby based in any way upon the acts of CUC or CUM or upon agreements or arrangements or understandings made by CUC or CUM with any other person or persons.

8. CONDITIONS PRECEDENT TO THE EXCHANGE BY THE STOCKHOLDER

The obligations of the Stockholder under the Plan are subject to the satisfaction or written waiver by the Stockholder of the following conditions on or prior to the Closing Date:

8.1 The representations and warranties by CUC and CUM in the Plan shall have been true and correct when made and shall be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date and CUC and CUM shall have delivered to the Stockholder an officers certificate confirming the same.

8.2 CUC and CUM shall have performed all of the terms and conditions of the Plan on their respective parts to be performed and CUC and CUM shall have delivered to the Stockholder an officers certificate confirming the same.

8.3 The Stockholder shall have received from Messrs. Golenbock and Barell, counsel for CUC and CUM, an opinion dated the Closing Date, in form and substance satisfactory to counsel for the Stockholder, to the effect that (i) the Plan has been duly and validly authorized, executed and delivered by CUC and CUM and is valid and binding upon them in accordance with its terms; and (ii) the CUC Stock

issuable to the Stockholder pursuant to the Plan has been validly authorized and, when issued and delivered to the Stockholder in accordance with the Plan, will be validly issued, fully paid and non-assessable.

8.4 No injunction or restraining order shall be in effect to forbid or enjoin the consummation of the Plan.

9. CONDITIONS PRECEDENT TO THE EXCHANGE BY CUC AND CUM

The obligations of CUC and CUM under the Plan are subject to the satisfaction or written waiver by CUC and CUM of the following conditions on or prior to the Closing Date:

9.1 The representations and warranties made by the Stockholder in the Plan (other than the representations and warranties contained in Section 3.7 of the Plan) shall have been true and correct when made and shall be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date and the Stockholder shall have delivered to CUM a certificate confirming the same, provided however, that in the event that representations or warranties made by the Stockholder relating to the liabilities or obligations of TM and the Subsidiaries are inaccurate in respect of liquidated sums in an amount or amounts which do not exceed $35,000 in the aggregate, the Stockholder may cure such misrepresentation or failure of warranty by making payment in cash to CUM at the Closing of the full amount of such liquidated sums, or if any such liability relates to a claim

or proceeding against TM or a Subsidiary, by posting a surety bond issued by a surety company satisfactory to CUM in a sum equal to the full amount of the claim or the full amount involved in such proceeding, plus a reasonable amount for costs and attorneys fees.

9.2 Neither TM nor any of the Subsidiaries shall have suffered any material adverse change in its financial condition or business and no material properties or assets of TM or any of the Subsidiaries shall have suffered any destruction, damage or loss and the Stockholder shall have delivered to CUM a certificate confirming the same.

9.3 The Stockholder shall have performed all of the terms, covenants and conditions of the Plan on his part to be performed.

9.4 The Balance Sheet and the Income Statement shall have been examined by CUC's independent public accountants, and CUC and CUM shall have been advised by such independent public accountants that, based upon a limited review of the financial statements of the TM Domestic Companies, nothing has come to the attention of such accountants as would indicate that the Balance Sheet and Income Statement do not fairly present the combined financial condition of the TM Domestic Companies at June 30, 1968, and their combined results of operations for the six months then ended, in accordance with generally accepted accounting principles consistently applied.

9.5 CUC and CUM shall have received an opinion of Pacht, Ross, Warne, Bernhard & Sears, counsel for the Stock-

holder, dated the Closing Date, in form and substance satisfactory to counsel for CUC and CUM, to the effect that (i) each of the TM Domestic Companies is duly organized, validly existing and in good standing under the laws of the State of New York and has full corporate power and authority to own or lease its properties and to conduct its business as now conducted; (ii) the Plan has been duly and validly executed and delivered by the Stockholder and is valid and binding upon him in accordance with its terms; (iii) the Stockholder has full legal right and authority to enter into the Plan and to transfer and assign the TM Stock as herein provided; (iv) the delivery by the Stockholder to CUM of certificates for the shares of TM Stock has passed good and marketable title to such shares to CUM, free and clear of all liens, encumbrances, claims, charges, agreements, rights, options, warrants and restrictions of any nature whatsoever; (v) all of the shares of TM Stock and all of the outstanding shares of capital stock of each of the Subsidiaries are validly issued, fully paid and non-assessable; (vi) except as stated in Schedule J, such counsel does not know of any material pending litigation to which TM or any Subsidiary is a party or of any material threatened litigation against TM or any Subsidiary; and (vii) no consent or order of any court or governmental agency or administrative body not obtained as of the Closing Date is required for the performance of the obligations of the Stockholder under the Plan.

9.6 No injunction or restraining order shall be in effect to forbid or enjoin the consummation of the Plan.

9.7 All of the CUC Stock issuable pursuant to the Plan shall have been approved for listing on the American Stock Exchange subject to notice of issuance.

9.8 Any permit or permits required to be issued by the State of California shall have been issued.

10. ISSUANCE AND DELIVERY OF CUC STOCK TO THE STOCKHOLDER

10.1 For the purpose of this Section 10, the following terms shall have the following definitions:

10.1.1 The term "Market Value" shall mean the average of the closing prices of CUC Stock on the American Stock Exchange during the period of 30 trading days ending three days prior to the Closing Date.

10.1.2 The term "Alternate Market Value" shall mean the average of the closing prices of CUC Stock on the American Stock Exchange during the period of 10 trading days ending immediately prior to the expiration of 60 days from the Closing Date.

10.1.3 The term "Effective Date Market Value" shall mean the average of the closing prices of CUC Stock on the American Stock Exchange during the period of 10 trading days ending three days prior to the effective date of the Registration Statement to be filed by CUC in 1968, hereinafter referred to in Section 14.

10.2 CUM shall deliver to the Stockholder on the Closing, in exchange for the TM Stock, such number of whole

shares of CUC Stock as shall have an aggregate Market Value most closely equal to $1,300,000. CUM may be required to deliver additional shares of CUC Stock in accordance with the provisions of Section 10.3. The Stockholder may cause the shares to be delivered to the Stockholder on the Closing to be registered in the name of Stockholder and such other persons (not to exceed two) in accordance with directions delivered by the Stockholder to CUM at or prior to the Closing.

10.3 If the Registration Statement to be filed by CUC in 1968, hereinafter referred to in Section 14, shall not become effective on or before the expiration of 60 days from the Closing Date, and the Effective Date Market Value is less than the Market Value, CUM shall deliver to the Stockholder on the effective date such additional number of shares of CUC Stock as shall have an aggregate Effective Date Market Value equal to the amount by which the Effective Date Market Value of the number of shares of CUC Stock issued on the Closing is exceeded by (i) the aggregate Market Value of such shares or (ii) the aggregate Alternate Market Value of such shares, whichever of (i) or (ii) is lower, provided, however, that in no event shall CUM deliver additional shares in number in excess of the number of shares originally delivered to the Stockholder and any designee of the Stockholder on the Closing, and provided further, that the right to receive such additional shares shall not be assignable by Stockholder except by operation of law.

10.4 All certificates for CUC Stock shall bear the following legend:

"These shares have not been registered under the Securities Act of 1933, as amended. They may not be sold or offered for sale in the absence of an effective registration statement as to the securities under that Act, an opinion of counsel as provided in the above referred to Agreement and Plan of Reorganization or as otherwise provided in said Agreement and Plan of Reorganization."

11. TRANSACTIONS AT CLOSING

11.1 At the Closing, the Stockholder contemporaneously with the performance by CUC and CUM of their respective obligations to be performed at the Closing, shall deliver to CUM the following:

11.1.1 Certificates representing all of the TM Stock endorsed for transfer, with all necessary state and local documentary transfer tax stamps affixed.

11.1.2 All of the TM Domestic Companies' Certificates of Incorporation, By-laws, minute books, stock certificate books, corporate seals, books of account, deeds, leases, indentures, agreements, evidences of indebtedness, correspondence, bank accounts and records, documents pertaining to all assets, claims, rights and liabilities and other existing documents and records of the TM Domestic Companies, including without limitation, payroll, social security and withholding tax records.

11.1.3 Resignations of all officers and directors of the TM Domestic Companies and resignations of such officers and directors of the Foreign Subsidiaries as are also officers or directors of any of the TM Domestic Companies.

11.1.4 The certificates referred to in Sections 9.1 and 9.2 of the Plan.

11.1.5 The opinion of Messrs. Pacht, Ross, Warne, Bernhard & Sears referred to in Section 9.5 of the Plan.

11.1.6 Such further certificates and documents as shall be reasonably requested by counsel for CUC and CUM, including without limitation, evidence of compliance with all of the conditions to the Closing contained in Section 9 hereof.

11.2 At the Closing, CUM, contemporaneously with the performance by the Stockholder of his obligations to be performed at the Closing, shall deliver to the Stockholder the following:

11.2.1 Certificates representing the number of shares of CUC Stock required to be issued and delivered on the Closing pursuant to Section 10 of the Plan.

11.2.2 Certified copies of resolutions duly adopted by the Boards of Directors of CUC and CUM authorizing and approving the execution and delivery of the Plan by CUC and CUM and the performance of their respective obligations hereunder.

11.2.3 The opinion of Messrs. Golenbock and Barell referred to in Section 8.3 of the Plan.

11.2.4 The certificates referred to in Sections 8.1 and 8.2 of the Plan.

11.2.5 Such further certificates and documents as shall be reasonably requested by counsel to the

Stockholder, including without limitation, evidence of compliance with all of the conditions of the Closing contained in Section 8 hereof.

12. INDEMNIFICATIONS

12.1 The Stockholder agrees to indemnify CUC and CUM and save them harmless from, against, for and in respect of any and all damages, losses, obligations, liabilities, claims, encumbrances, deficiencies, costs and expenses (including without limitation, reasonable attorneys fees and other costs and expenses incident to any suit, action, investigation, claim or proceeding) (hereinafter referred to collectively as "Losses") suffered, sustained, incurred or required to be paid by CUC or CUM or either of them by reason of any breach or failure of observance or performance of any representation, warranty, covenant, agreement or commitment made by the Stockholder hereunder, or relating to or as a result of any such representation, warranty, covenant, agreement or commitment being untrue or incorrect in any respect.

12.2 With respect to the aggregate of Losses which CUC or CUM may have suffered as a result of a breach or failure of observance or performance of any representation, warranty, covenant, agreement or commitment made by the Stockholder or relating to or as a result of any representation, warranty, covenant, agreement or commitment being untrue or incorrect, the Stockholder agrees to pay to CUC or CUM on demand the entire amount of such Losses, without any credit for the fair market value of any assets which TM and the Subsidiaries shall

own on the date hereof which shall not have been stated on the Balance Sheet.

12.3 In the event that the Stockholder shall be obligated to CUC or CUM pursuant to this Section 12, or in the event that a suit, action, investigation, claim or proceeding is begun, made or instituted as a result of which the Stockholder may become obligated to CUC or CUM hereunder, CUC or CUM shall give prompt notice to the Stockholder of the occurrence of such event. The Stockholder agrees to defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding at the Stockholder's own cost and expense. Any such defense, contest or other protection may be taken by the Stockholder without prejudice to his right to recover the costs thereof from CUC or CUM in the event that the matter involved was not a proper subject of indemnification notwithstanding the success or failure of such defense, contest or other protection. CUC and CUM shall have the right, but not the obligation, to participate, at their own expense, in the defense thereof by counsel of their own choice. In the event that the Stockholder fails timely to defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding, CUC and CUM shall have the right to defend, contest or otherwise protect against the same and make any compromise or settlement thereof and recover the entire cost thereof from the Stockholder, including without limitation, reasonable attorneys fees, disbursements, and all amounts paid as a result of such suit, action, investigation, claim or proceeding or compromise or settlement thereof.

12.4 Anything hereinabove to the contrary notwithstanding, the Stockholder shall have no liability under this Section 12 for any Losses which shall not exceed $10,000 in the aggregate. With respect to any federal tax deficiency or assessment for any period or periods up to and including the Closing Date, the indemnity of the Stockholder hereunder shall be limited to the lesser of:

(a) the actual amount of such deficiency or assessment; or

(b) (i) the amount of any tax, federal and state, payable by TM (or any successor of TM) after all steps (including specifically the creation of a deduction against the income upon which such tax is imposed) which could be taken from and after the date of the determination of the deficiency or assessment under any provision of the Internal Revenue Code of 1954 have been taken by TM (or such successors) to decrease the tax so imposed upon TM; plus

(ii) the amount of any tax, federal and state, payable, whether by TM (or such successors) or by any parent corporation of TM (or such successor) as a direct result of taking such steps.

In determining for purposes of subparagraph (b) whether or not a particular step could be taken by TM (or such successor), TM (or such successor) shall be determined to be a wholly owned subsidiary of another domestic corporation. CUC, CUM and TM shall not take, nor shall this section be deemed to require any of them to take, any steps which would violate any applicable

state law, provided however, that CUC, CUM and TM shall use their best efforts to comply with, or to enable the others to comply with, any applicable state law.

12.5 CUC and CUM shall indemnify the Stockholder and save him harmless from, against, for and in respect of any and all Losses suffered, sustained, incurred or required to be paid by the Stockholder by reason of any breach or failure of observance or performance of any representation, warranty, covenant, agreement or commitment made by CUC or CUM hereunder, or relating to or as a result of any such representation, warranty, covenant, agreement or commitment being untrue or incorrect in any respect.

12.6 With respect to the aggregate of Losses which the Stockholder may have suffered as a result of a breach or failure of observance or performance of any representation, warranty, covenant, agreement or commitment made by CUC or CUM or relating to or as a result of any representation, warranty, covenant, agreement or commitment being untrue or incorrect, CUC and CUM agree to pay to the Stockholder on demand the entire amount of such Losses.

12.7 In the event that CUC or CUM shall be obligated to the Stockholder pursuant to this Section 12, or in the event that a suit, action, investigation, claim or proceeding is begun, made or instituted as a result of which CUC or CUM may become obligated to the Stockholder hereunder, the Stockholder shall give prompt notice to CUC and CUM of the occurrence of such event. CUC and CUM agree to defend,

contest or otherwise protect against any such suit, action, investigation, claim or proceeding at CUC's and CUM's own cost and expense. Any such defense, contest or other protection may be taken by CUC or CUM without prejudice to their right to recover the cost thereof from the Stockholder in the event that the matter involved was not a proper subject of indemnification, notwithstanding the success or failure of such defense, contest or other protection. The Stockholder shall have the right, but not the obligation, to participate, at his own expense, in the defense thereof by counsel of his own choice. In the event that CUC and CUM fail timely to defend, contest or otherwise protect against any such suit, action, investigation, claim or proceeding, the Stockholder shall have the right to defend, contest or otherwise protect against the same and make any compromise or settlement thereof and recover the entire cost thereof from CUC and CUM, including without limitation, reasonable attorneys fees, disbursements, and all amounts paid as a result of such suit, action, investigation, claim or proceeding or compromise or settlement thereof.

13. REMEDIES FOR BREACH

13.1 In the event that CUC and CUM shall be entitled to decline to close the transaction contemplated by the Plan and shall decline to close the transaction contemplated by the Plan, CUC and CUM shall have no liability to the Stockholder under or in any way by reason hereof and CUC and CUM shall have all such rights and remedies against the Stockholder as may be available to them pursuant to the provisions of the Plan, in law or equity, or otherwise.

13.2 If CUC and CUM shall be entitled to decline to close the transaction contemplated by the Plan, but CUC and CUM shall elect nevertheless to close the transaction contemplated by the Plan, CUC and CUM shall be deemed to have waived all claims of any nature arising from the failure of the Stockholder to comply with such of the conditions referred to in Section 9 hereof of which CUC and CUM had actual knowledge on the Closing.

13.3 In the event that the Stockholder shall be entitled to decline to close the transaction contemplated by the Plan and shall decline to close the transaction contemplated by the Plan, the Stockholder shall have no liability to CUC or CUM under or in any way by reason hereof and the Stockholder shall have all such rights and remedies against CUC and CUM as may be available to him pursuant to the terms of the Plan, in law or equity, or otherwise.

13.4 If the Stockholder shall be entitled to decline to close the transaction contemplated by the Plan, but the Stockholder shall elect nevertheless to close the transaction contemplated by the Plan, the Stockholder shall be deemed to have waived all claims of any nature arising from the failure of CUC or CUM to comply with such of the conditions referred to in Section 8 hereof of which the Stockholder had actual knowledge on the Closing.

13.5 The specific remedies to which any party may resort under the terms of the Plan are cumulative and are not intended to be exclusive of any other remedies or means

of redress to which it may be lawfully entitled in case of any breach or threatened breach or failure of observance or performance of any representation, warranty, covenant, agreement or commitment made hereunder or relating to or by reason of any such representation, warranty, covenant, agreement or commitment being untrue or incorrect.

13.6 In the event that CUC and CUM elect to close the transaction contemplated by the Plan and the Stockholder wrongfully refuses so to do, or if the Stockholder fails (or if a failure by the Stockholder is threatened) to comply with any of the covenants and agreements contained in the Plan on their respective parts to be performed, then, in addition to all other remedies which may be available to them, CUC and CUM shall be entitled to injunctive and other equitable relief, including without limitation, specific performance, and shall be entitled to recover from the Stockholder their loss, cost and expense (including reasonable attorneys fees) incurred by them in securing such injunctive or equitable relief.

13.7 In the event that the Stockholder elects to close the transaction contemplated by the Plan and CUC or CUM wrongfully refuses so to do, or if CUC or CUM fails (or if a failure by CUC or CUM is threatened) to comply with any of the covenants and agreements contained in the Plan on CUC's or CUM's part to be performed, then, in addition to all other remedies which may be available to him, the Stockholder shall be entitled to injunctive and other equitable relief, including

without limitation, specific performance, and shall be entitled to recover from CUC and CUM his loss, cost and expense (including reasonable attorneys fees) incurred by the Stockholder in securing such injunctive or equitable relief.

13.8 Except as specifically provided in Sections 13.2 and 13.4 above, all of the representations, warranties, covenants and agreements made by the parties to the Plan shall survive the execution and delivery of the Plan and the consummation of the transactions contemplated hereunder. The fact that CUC or CUC's or CUM's representatives or agents may have made certain examinations and inspections of or received information pertaining to certain properties, documents and records of TM and the Subsidiaries, does not in any way affect or reduce the full scope or protection of the various representations, warranties, covenants, agreements or commitments contained herein.

14. ADDITIONAL COVENANTS OF CUC

During 1968, CUC shall, at its own expense, take all necessary action to file and thereafter use its best efforts to cause to become effective a Registration Statement under the Securities Act of 1933, as amended, with respect to the shares of CUC Stock issued and delivered to the Stockholder on the Closing. CUC shall, at its own expense, deliver to the Stockholder from time to time, as requested by the Stockholder, such number of copies of the prospectus forming a part of such Registration Statement (and, in the event of any amendment of or supplement to such prospectus, such

amended or supplemented prospectus) as the Stockholder shall reasonably request. If, at any time, any event shall occur which should be set forth in an amendment of or supplement to such prospectus in order to make the statements in such prospectus not misleading or it shall be necessary to amend or supplement such prospectus to comply with law or with the rules and regulations of the Securities and Exchange Commission, CUC will prepare and furnish to the Stockholder, at its own expense, such number of copies of an amendment or amendments of, or a supplement or supplements to, such prospectus, as shall be reasonably requested by the Stockholder, which will so amend or supplement such prospectus so that, as amended or supplemented, it will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements in such prospectus not misleading. CUC shall, at its own expense, file such post-effective amendments or take such other action as shall be necessary to maintain the effectiveness of such Registration Statement until such time as the Stockholder shall have sold or otherwise disposed of the shares of CUC Stock registered pursuant thereto or until the expiration of a period of nine months from the effective date of such Registration Statement, whichever is the earlier to occur. Any Registration Statement filed by CUC hereunder may include other shares of CUC Stock. If, during 1970, CUC shall determine to register any securities of CUC on Form S-1 under the Securities Act of 1933, as amended, CUC shall notify the Stockholder thereof and include among the securities which it then registers such shares of CUC Stock

issued pursuant to Section 10 of the Plan as shall be specified by request from the Stockholder to CUC made within 20 days after the giving by CUC of such notice to the Stockholder. The foregoing provisions relating to the Registration Statement to be filed during 1968 shall apply to a Registration Statement filed pursuant to this Section in 1970.

16. GENERAL PROVISIONS

16.1 Any notice, report or demand required, permitted or desired to be given pursuant to any of the provisions of the Plan shall be deemed to have been sufficiently given or served for all purposes if sent by registered mail, return receipt requested and postage prepaid (and airmail, if the distance is in excess of 300 miles), as follows:

If to CUC or CUM, at 8920 Wilshire Boulevard, Beverly Hills, California, with a copy to Messrs. Golenbock and Barell, 60 East 42nd Street, New York, New York 10017; and if to the Stockholder, c/o Marvin Sears, Esq., at Suite 500, 1800 Avenue of the Stars, Los Angeles, California 90067. Any of the foregoing parties may at any time and from time to time change the address to which notice shall be sent hereunder, by notice to the other parties given under this Section 16.1. The date of the giving of such notice shall be the date of the posting of the mail.

16.2 Each of the parties hereto shall pay his or its own expenses incident to preparing for, entering into

and carrying into effect the Plan.

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16.3 The Plan shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

16.4 The Plan constitutes the entire agreement among the parties hereto with respect to the subject matter hereof. The representations, warranties, covenants and agreements set forth in the Plan, and in any financial statements, Schedules or exhibits delivered pursuant hereto, constitute all of the representations, warranties, covenants and agreements among the parties hereto and upon which the parties have relied. Except as may be otherwise specifically provided herein, no change, modification, addition or termination of the Plan or any part thereof shall be valid unless in writing and signed by or on behalf of the party to be charged therewith.

16.5 No waiver of any of the provisions hereof shall be effective unless in writing and signed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver or waiver in respect of any subsequent breach or default, whether of similar or different nature, unless expressly so stated in writing.

16.6 The headings or captions under the Sections of the Plan are for convenience and reference only, and do not form a part hereof, and do not in any way modify, interpret or construe the intent of the parties or affect any of the provisions of the Plan.

BEST COPY AVAILABLE

16.7 The Plan may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of the Plan to produce or account for more than one such counterpart.

16.8 Concurrently herewith the parties have executed and exchanged copies of all Schedules referred to in the Plan, which Schedules are hereby made a part hereof by reference.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

WALDEN ROBERT CASSOTTO, also known as Bobby Darin)

COMMONWEALTH UNITED MUSIC, INC.

By _____

COMMONWEALTH UNITED CORPORATION

By _____

SDNY #

70 CIV. 5030

A63

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION FILED

OCT 28 1970

PATRICIA D. HOWARD CLERK OF THE PANEL

DOCKET NO. 37A
COMMONWEALTH CASE

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Re: Multidistrict Litigation Resulting From the Seeburg-Commonwealth United Merger

Walden Robert Cassotto, a/k/a Bobby Darin v. Commonwealth United Corp., et al, C. D. California, Civil Action No. 70-1920-DWW

U.S. DISTRICT COURT FILED NOV 16 1970 S.D. OF N.Y.

CONDITIONAL TRANSFER ORDER

On May 4, 1970, after notice and hearing, the Panel transferred six actions to the United States District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. Since that time, 2 *tag-along cases* have also been transferred to the Southern District of New York for coordinated or consolidated pretrial proceedings. With the consent of that court, all such actions have been assigned to Honorable Frank H. McFadden.

It appears from the pleadings filed in this action that it involves questions of fact which are common to the actions previously transferred to the Southern District of New York and assigned to Judge McFadden.

Pursuant to Rule 12 of the *Rules of Procedure of the Judicial Panel on Multidistrict Litigation* the above-captioned *tag-along case* is hereby transferred under 28 U.S.C. §1407 to the Southern District of New York on the basis of the hearing held on February 27, 1970 and for the reasons stated in the Opinion and Order of May 4, 1970 (312 F. Supp. 909), and, with the consent of that court, assigned to the Honorable Frank H. McFadden.

This order does not become effective until it is filed in the office of the Clerk of the United States District Court for the Southern District of New York. The transmittal of this order to said Clerk for filing shall be stayed fifteen days from the entry thereof and if any party files a Notice of Opposition with the Clerk of the Panel within this fifteen-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:

THIS IS A TRUE COPY

ATTEST Patricia D. Howard
Clerk, Judicial Panel on Multidistrict Litigation

Patricia D. Howard
Clerk of the Panel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

WALDEN ROBERT CASSOTTO a/k/a Bobby Darin,	STIPULATION AND ORDER OF TRANSFER
Plaintiff,	Docket No. M-19-95 COMMONWEALTH CASES
v.	
COMMONWEALTH UNITED CORPORATION, et al.,	Index No. 70 Civ. 5030
Defendants.	

- -x

IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED by the undersigned attorneys for each of the respective parties which have appeared in the above-entitled action heretofore transferred to this Court pursuant to 28 U.S.C. § 1407(a), that, for the convenience of the parties and witnesses and in the interest of justice, said action upon the order of this Court pursuant to 28 U.S.C. § 1404(a) shall be transferred to this Court for all purposes.

Patterson, Belknap & Webb
Attorneys for Plaintiff

Attorneys for Defendant
Commonwealth United Corporation
and Defendant Commonwealth
United Music, Inc.

Attorneys for Defendant
Howard D. Martin

New York, New York
November 9, 1972

SO ORDERED THIS 8th DAY
OF ~~AUGUST~~ November, 1972.

U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -

WALDEN ROBERT CASSOTTO a/k/a BOBBY DARIN,	
Plaintiff,	INTERROGATORIES TO ~~DEFENDANT~~ COMMONWEALTH UNITED CORPORATION
v.	Docket No. M-19-95 COMMONWEALTH CASES
COMMONWEALTH UNITED CORPORATION, et al.,	Index No. 70 Civ. 5030
Defendants.	

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The plaintiff requests that the defendant Commonwealth United Corporation (now known as Iota Industries, Inc.) answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. With respect to each security of Commonwealth United Corporation (CUC) registered, or sought to be registered, with the Securities and Exchange Commission (the Commission), state (a) the date when a registration statement was first filed with the Commission, (b) the date on which each amendment, if any, of such registration statement was filed with the Commission, (c) the effective date, if any, of such registration statement and (d) the amount and class of securities sought to be registered thereby.

2. What efforts were made by or on behalf of CUC to cause the registration statement dated November 27, 1968 covering, inter alia, 77,323 shares of its Common Stock issued pursuant to a contract with plaintiff dated August 20, 1968 (the Registration Statement) to become effective?

3. Give the date of each act referred to in your answer to Interrogatory 2.

4. With respect to each person who directed or participated in any act referred to in your answer to Interrogatory 3, give his or her name, present residence address, present business address and his or her relationship with CUC both at the time of such act and at present.

5. Give the date and nature of each communication, written or otherwise, between (i) the Commission, or any representative thereof, and (ii) CUC, or any one acting on its behalf, concerning (a) the Registration Statement, (b) any amendment thereof, or (c) the subject matter of the Registration Statement or of any amendment thereof.

6. Where, and in whose custody, are the records of any of the communications referred to in your answers to Interrogatory 5?

7. Why was no disclosure made in Amendment No. 1, dated April 29, 1969, to the Registration Statement of:

(a) the market price of common stock of Perfect Film & Chemical Corporation as of March 18, 1969;

(b) the fact that the per share price CUC agreed on March 18, 1969 to pay for 86,000 shares of such stock was approximately 192% of the market price for such stock as of that date; or

(c) CUC's reasons for making such acquisition at that price?

8. Give the date of distribution of each proxy statement sent to CUC stockholders by CUC management in 1968 and 1969 and the date of each stockholder's meeting

for which proxies were solicited.

9. Why did CUC fail to make disclosure either in Amendment No. 1 to the Registration Statement or in Amendment No. 2 thereto of its inability to obtain financing in support of its capital investment programs at least to the extent reported at page 12 of the CUC Proxy Statement dated December 8, 1969, to wit: "Commencing early in 1969, the Company's projected capital investment programs were restricted by its inability to obtain bank or institutional financing in support thereof." and "During the first half of 1969, the Company had sought, but was unable to establish, banking relationships to provide the short-term working capital needs of the Company and its subsidiaries."

10. Why in Amendment No. 1 to the Registration Statement was no disclosure made of the fact disclosed in CUC's Proxy Statement dated December 8, 1969 that pursuant to the "Fuller Agreement" of January 30, 1969, CUC not only paid $3,000,000 for purchase of all outstanding shares of the 5-1/2% cumulative preferred stock of George A. Fuller Company, Inc. but also was substituted as guarantor of secured loans made by The Chase Manhattan Bank to Fuller aggregating approximately $9,700,000?

11. Why did CUC fail to disclose in Amendments No. 1 and 2 to the Registration Statement the nature and full extent of its relationship with Kleiner, Bell & Co., Incorporated (Kleiner, Bell), at least to the extent reported in its Proxy Statement dated December 8, 1969, including the fact that in 1968 and 1969 CUC had paid or agreed to pay, Kleiner, Bell underwriting discounts, commissions, brokerage and fees exceeding approximately

$1,650,000?

12. Why did CUC file with the Commission no amendment to the Registration Statement before April 29, 1969?

13. Why, having filed with the Commission a separate registration statement covering different securities on February 3, 1969, did CUC fail to file with the Commission an amendment of the Registration Statement on or about that date?

Dated: New York, New York
November 30, 1973

PATTERSON, BELKNAP & WEBB

By _____
A Member of the Firm
Attorneys for Plaintiff
Walden Robert Cassotto,
a/k/a Bobby Darin
One Wall Street
New York, New York 10005
(212) WH 3-1300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -

WALDEN ROBERT CASSOTTO a/k/a BOBBY DARIN,

Plaintiff,

v.

COMMONWEALTH UNITED CORPORATION, et al.,

Defendants.

: INTERROGATORIES TO DEFENDANT COMMONWEALTH UNITED MUSIC, INC.

: Docket No. M-19-95 COMMONWEALTH CASES

: Index No. 70 Civ. 5030

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The plaintiff requests that the defendant Commonwealth United Music, Inc. answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. If it is the position of Commonwealth United Music, Inc. (CUM) that it made any effort to cause the registration statement of November 27, 1968, covering, inter alia, 77,323 shares of Common Stock issued by Commonwealth United Corporation pursuant to a contract with plaintiff dated August 20, 1968 (the Registration Statement) to become effective at the earliest practicable time after the filing of the Registration Statement, describe each such effort and give the date or dates when made.

2. With respect to each person who directed or participated in any act referred to in your answer to Interrogatory 1, give his or her name, present residence address, present business address and his or her relationship with CUM both at the time of such act and at present.

3. Give the date and nature of each communication, written or otherwise, between (i) the Securities and

Exchange Commission, or any representative thereof, and (i) CUM, or any one acting on its behalf, concerning (a) the Registration Statement, (b) any amendment thereof, or (c) the subject matter of the Registration Statement or of any amendment thereof.

4. Where, and in whose custody, are the records of any of the communications referred to in your answers to Interrogatory 3?

Dated: New York, New York
November 30, 1973

PATTERSON, BELKNAP & WEBB

By _____
A Member of the Firm
Attorneys for Plaintiff
Walden Robert Cassotto,
a/k/a Bobby Darin
One Wall Street
New York, New York 10005
(212) WH 3-1300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

GERALD LIPSKY, executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a BOBBY DARIN) deceased,

Plaintiff,

v.

COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION; and STREET SONGS, INC.,

Defendants.

- -x

AMENDED
UNIFIED COMPLAINT

Docket No. M-19-95
COMMONWEALTH CASES

Index No.
70 Civ. 5030 (FHMcF)

Plaintiff Gerald Lipsky, executor under the will of Walden Robert Cassotto (a/k/a Bobby Darin) deceased, by his attorneys, Patterson, Belknap & Webb, for his unified complaint against the defendants and each of them, alleges:

1. This action was duly commenced by Walden Robert Cassotto, also known as Bobby Darin ("Darin"), who died on December 20, 1973 domiciled in the State of Nevada and whose last will and testament has been duly admitted to probate by the Eighth Judicial District Court of the State of Nevada, County of Clark, which has duly issued letters testamentary thereunder to plaintiff, Darin's sole legal representative, who has been duly substituted in Darin's place and stead in this action. The matter in controversy herein exceeds, exclusive of interests and costs, the sum of $10,000.

2. Upon information and belief:

(a) Defendant COMMONWEALTH UNITED CORPORATION

(now known as IOTA INDUSTRIES, INC. and hereinafter referred to as "CUC"), is, and at all times herein mentioned was, a Delaware corporation doing business in the Borough of Manhattan, New York City, and having its principal place of business in a state other than Nevada.

(b) Defendant COMMONWEALTH UNITED MUSIC, INC. (hereinafter referred to as "CUM") is, and at all times herein mentioned was, a Delaware corporation doing business in the Borough of Manhattan, New York City and having its principal place of business in a state other than Nevada. At all times herein mentioned the entire outstanding stock of CUM was, and now is, owned or controlled by CUC.

(c) Defendant ALLEY MUSIC CORPORATION (hereinafter referred to as "Alley Music") and defendant STREET SONGS, INC. (hereinafter referred to as "Street Songs") are New York corporations doing business in the Borough of Manhattan, New York City, and having their principal places of business in a state other than Nevada.

(d) Defendant THE HUDSON BAY MUSIC COMPANY, which was formerly known as ALLEY-STREET MUSIC VENTURE and is hereinafter referred to as "Hudson Bay", is a joint venture of defendants Alley Music and Street Songs, does business in the Borough of Manhattan, New York City, and has its principal place of business in a state other than Nevada.

3. Darin, a professional songwriter, singer and actor, for many years until shortly before his death performed on radio and television, in motion pictures, in concert halls and on the stage and his musical compositions and recordings have been sold in large volume throughout the United States and abroad. Approximately twelve years ago,

Darin became the sole owner of the outstanding shares of stock of T. M. Music, Inc. (hereinafter referred to as "TM"), a music publisher incorporated in New York State and doing business in New York City. Under Darin's direction and ownership TM became one of the principal publishers of popular music and recordings in the United States as a result of the high calibre of those performing artists, authors, composers, arrangers and adapters of musical compositions and associated personnel, including Darin, who were involved in TM's production of copyrighted songs and recordings thereof.

4. On or about August 20, 1968, after negotiations in New York City, Darin entered into a written contract with CUC and CUM pursuant to which, in return for Darin's transfer to CUM of all outstanding shares of TM stock, which were then owned in their entirety by Darin, CUC became obligated to issue to Darin such number of shares of CUC common stock, with a par value of One Dollar ($1.00) per share as would have an approximate market value of $1,300,000. A true copy of said contract is attached hereto as Exhibit A.

5. Under the terms of said contract, and specifically paragraphs 4 and 14 thereof, CUC expressly represented to and covenanted with Darin that during the year 1968 it would file, and thereafter use its best efforts to cause to become effective at the earliest practicable time, a registration statement under the Securities Act of 1933, as amended, covering the shares of CUC common stock to be issued to Darin upon the closing of said contract. Said contract also provided that, if registration of said stock should become effective more than 60 days after the closing date,

Darin would be protected against an intervening decline in market value of said stock by CUC's obligation to issue up to 77,323 additional shares of such stock to Darin. In a prospectus dated August 28, 1968 filed with the Securities and Exchange Commission CUC represented that pursuant to the contract of August 20, 1968 Darin would receive stock worth at least $1,300,000.

6. In reliance upon the representations and covenants described in paragraph 5, Darin entered into the contract of August 20, 1968 calling for the exchange of his TM stock for shares of CUC common stock and thereafter pursuant to said contract delivered all of his shares of TM stock in exchange for 77,323 shares of unregistered CUC stock at the closing of said contract on September 13, 1968. In conjunction with and at the time of the closing of said contract and in consideration thereof Darin entered into an exclusive songwriter's contract with Chardon Music, Inc., a New York music publisher owned or controlled by CUC, and said songwriter's contract, which is expressly governed by New York law and of which a true copy is hereto annexed as Exhibit B, was assigned to TM after CUC acquired control of Darin's TM stock pursuant to the contract of August 20, 1968. Accordingly, Darin became obligated under said songwriter's contract until September 13, 1973 to render exclusively to TM substantially all of his services as author, composer, arranger and adapter of musical compositions.

7. At all times pertinent to the complaint, CUC common stock was listed and traded on the American Stock Exchange, a national securities exchange, except for the period after July 22, 1969, when at the instance of CUC said

exchange suspended trading therein. On August 1, 1969, the Securities and Exchange Commission at the instance of CUC directed that over-the-counter trading in CUC securities be suspended; on or about December 23, 1969, over-the-counter trading in CUC common stock was resumed. On September 13, 1968, the closing quotation for CUC stock on the American Stock Exchange was 18; as of August 20, 1970, the over-the-counter price of CUC common stock was approximately $ .50 bid, $ .75 asked.

8. On September 13, 1968, at the time of the closing of said contract, [illegible] assets included a substantial collection of original and unique musical compositions by Darin and by other songwriters, and copyrights, renewal copyrights and extensions therein; licenses to publish musical compositions; contracts with songwriters, contracts for the administration of a catalogue of musical compositions, and all of the outstanding stock of: TOWNE MUSIC CORP., a New York corporation, T. M. MUSIKVERLARGE, G. M. B. H., a German corporation, T. M. MUSIC (Australia) Pty. Ltd., an Australian corporation, and T. M. MUSIC LIMITED, a British corporation. In 1967 said assets generated gross income in excess of $373,000.

9. On November 27, 1968, CUC's New York corporate attorneys caused a registration statement to be filed with the Securities and Exchange Commission (the Commission) covering the 77,323 shares of CUC common stock issued to Darin and his designees pursuant to the contract of August 20, 1968. Thereafter, in breach of the covenants contained in paragraphs 4 and 14 of said contract, CUC, although

in frequent communication with the Commission with regard to other corporate transactions, failed to take reasonable steps, much less use its best efforts, to cause registration of Darin's stock to become effective at the earliest practicable time.

10. On February 3, 1969, CUC filed a registration statement with the Commission of shares of its common and preferred stock which it proposed to use in a complex program for acquisition of stock in Warner Bros. - Seven Arts Limited, one of a series of proposed corporate acquisitions upon which CUC embarked late in 1968 and early in 1969. Material omissions from such registration statement were cited in the complaint filed by the Commission in an action commenced against CUC in the United States District Court for the District of Columbia on October 2, 1969 to enjoin CUC from, inter alia:

> "making false and misleading statements, omitting to state all material facts, and failing to disclose fully and accurately all material facts in filings required to be made or, in fact, made with the Commission by defendant CUC in connection with the offer or proposed offer of any securities, or from engaging in any other activities in connection with defendant CUC in violation of Section 10(b) of the Exchange Act and the Rules and Regulations thereunder."

A copy of the complaint in said action is hereto annexed as Exhibit C and expressly made a part hereof.

11. On April 29, 1969, CUC filed with the Commission Amendment No. 1 to its November 27, 1968 registration statement. Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the February 3, 1969 registration statement, in

that said Amendment, inter alia, (i) omitted to state material facts as specified in paragraphs 8(b)(2), 8(b)(3), 8(c)(2), 8(d)(2) and 8(d)(3) of Exhibit C; and (ii) omitted to state the nature and extent of CUC's relationship with Kleiner, Bell & Co., Incorporated, CUC's investment banker and financial adviser, in connection, inter alia, with a July 1968 public offering of $15,000,000 of CUC's 6% Convertible Debentures; an August 1968 sale of 800,000 shares of CUC Common Stock by Sunasco, Incorporated to CUC and its assignee; the acquisition of The Seeburg Corporation in 1968; and the sale of participating units in Sunset's 1968 exploration programs. In addition, said Amendment omitted to state that CUC had obligated itself to pay, pursuant to an agreement dated March 18, 1969, a price approximately $3,350,000 (92%) in excess of the market price for 86,000 shares of common stock of Perfect Film & Chemical Corporation.

12. From time to time, commencing in the early spring of 1969, Darin inquired of Charles Koppelman ("Koppelman"), who during the years 1968, 1969 and 1970 served as an officer of CUM and/or a director of CUC, as to the status of efforts of CUC and its New York corporate attorneys to effectuate registration of his CUC stock and was given repeated assurance by Koppelman that such registration would soon become effective and that, if it did not, Darin could recover ownership and control of TM and its assets as of the time of Darin's transfer of his TM stock.

13. On June 24, 1969, CUC mailed to its stockholders proxy materials, including a proxy statement previously filed with the Commission, with respect to a stockholders meeting called to consider, inter alia, CUC's proposed acquisition from Dart Industries, Inc. of its Rexall Drug business by means of an exchange of securities. Material omissions from such proxy statement were cited by the Commission in its aforesaid complaint against CUC.

14. On June 27, 1969, CUC filed with the Commission Amendment No. 2 to its November 27, 1968 Registration Statement. Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the proxy statement mailed by CUC on June 24, 1969 to its stockholders in that said Amendment, inter alia, omitted to state material facts and failed to disclose fully and accurately material facts as specified in paragraphs 11(a)-(d) of Exhibit C.

15. As a result of the representations and assurances given Darin by Koppelman referred to in paragraph 12, Darin withheld action to rescind the contract of August 20, 1968 until April 7, 1970, at which time he demanded of CUC that ownership of TM and its assets be restored to him because of the failure of CUC to fulfill its aforesaid commitments.

16. On August 27, 1970, Darin commenced this action against CUC, CUM and others, in the United States District Court for the Central District of California, where CUC then had its principal office, seeking, inter alia, rescission of the contract of August 20, 1968 and offering

to restore the consideration furnished by CUC and CUM under said contract or in connection therewith, including any contingent right to additional CUC securities as provided by paragraph 10.3 of said contract. By this amended unified complaint plaintiff reasserts such offer and demands that CUC and CUM and any transferee or successor of either of them give an accounting of its profits upon any and all of such assets.

17. After the commencement of Darin's action, by agreements made in New York City and expressly governed by the laws of New York State, CUC caused to be assigned, or otherwise transferred, to one or more of Hudson Bay, Alley Music, Street Songs, Koppelman, Donald Rubin and Koppelman-Rubin Enterprises, each of whom was engaged in the music publishing business in New York City, (i) all of the assets owned by TM as of the time its entire capital stock was acquired from Darin by CUM in 1968 and all rights which had accrued upon such assets before their transfer on or about November 19, 1970; and (ii) the exclusive song-writer's contract referred to in Paragraph 6 and all rights which had theretofore accrued thereunder, including rights in and to various copyrighted musical compositions composed by Darin since September 13, 1968. Hereinafter the aforementioned assets are collectively referred to as the TM Assets.

18. At the time of each such assignment and transfer referred to in paragraph 17, each of the defendants knew of the pendency of this action and Darin's demand herein for rescission of the exclusive songwriter's contract and of

the contract of August 20, 1968 and accordingly for restoration to Darin of the TM Assets and of any rights accruing thereunder. In connection with such assignments and transfers CUC, CUM, Koppelman and others undertook to indemnify Hudson Bay, Alley Music and Street Songs against obligations or liabilities to Darin (including an award of the TM assets to Darin) arising out of or in connection with the contract of August 20, 1968.

19. On or after November 19, 1970, at a time or times unknown, the TM Assets were placed under the ownership and/or control of Hudson Bay, Alley Music and Street Songs.

20. On October 9, 1972, Hudson Bay released Darin as of October 1, 1972 from any further obligation under the exclusive songwriter's contract but, unless enjoined, Hudson Bay, Alley Music and Street Songs, or one or more of them, may attempt further transfers or other dispositions of the TM Assets, including the rights, the royalties and other profits which have accrued and will accrue thereon.

21. Although Darin duly performed all obligations on his part required to be performed pursuant to the contract of August 20, 1968 and pursuant to the exclusive songwriter's contract, CUC failed to use its best efforts to effectuate registration of Darin's shares of CUC stock at the earliest practicable time after filing a registration statement covering such stock in 1968 and thereby breached its covenants under the contract of August 20, 1968; such covenants were material and essential elements of said contract; and such breach effected a total failure

of the consideration promised to Darin by CUC under said contract, which in paragraph 13.7 provides that for CUC's failure to comply with any covenant contained in said contract, in addition to all other available remedies, plaintiff is entitled to injunctive and other equitable relief, and to recovery from CUC and CUM of all loss, cost and expense (including reasonable attorneys' fees) incurred by Darin and plaintiff in securing such relief.

WHEREFORE, plaintiff prays for judgment:

1. Rescinding the contract of August 20, 1968 between defendant Commonwealth United Corporation and defendant Commonwealth United Music, Inc., on the one hand, and Darin, on the other, and directing the defendants (and any transferee of any of their interests in and to T. M. Music, Inc. and its assets, including the exclusive songwriter's contract of September 13, 1968 between Darin and Chardon Music, Inc.), upon delivery to the Court (for apportionment by the Court among the defendants and any such transferees as their interests may appear) of 77,323 shares of stock of Commonwealth United Corporation, to make full restoration to plaintiff as Darin's sole legal representative of: (i) all rights, royalties and other profits heretofore or hereafter accruing under the aforesaid exclusive songwriter's contract, (ii) the assets owned by T. M. Music, Inc. as of the time on September 13, 1968 when all of the stock thereof was transferred by Darin pursuant to the contract of August 20, 1968 and (iii) all rights, royalties and other profits accruing upon such assets since September 13, 1968 (hereinafter the rights and assets described in (i), (ii) and (iii) are referred to as the Darin Assets);

2. Enjoining each of the defendants and any transferee of an interest in any of the Darin Assets from transferring or further encumbering any of the Darin Assets;

3. Requiring an accounting of all profits derived from any of the Darin Assets by the defendants and any transferee of an interest in any of the Darin Assets;

4. If restoration to plaintiff of the Darin Assets should not be ordered, directing defendants to pay plaintiff $2,000,000 in damages; and

5. Awarding to plaintiff the costs and disbursements of this action, including an allowance for reasonable attorneys' and accountants' fees, and such other and further relief as to the Court may seem just and proper in the premises.

PATTERSON, BELKNAP & WEBB
Attorneys for Plaintiff

By _____
A Member of the Firm

30 Rockefeller Plaza
New York, New York 10020
(212) 541-4000

New York, New York

August 5, 1974

(FOR EXHIBIT A SEE APPENDIX
PAGES A22-A62)

EXHIBIT B

A83

AGREEMENT made this 18th day of September 1968 between WALDEN ROBERT CASSOTTO, professionally known as BOBBY DARIN (hereinafter referred to as "Writer") whose address is c/o Marvin Sears, Esq., Pacht, Ross, Warne, Bernhard & Sears, Suite 500 Gateway East Building, Los Angeles, California and CHARDON MUSIC, INC., a Delaware Corporation (hereinafter referred to as "Publisher") whose address is 1650 Broadway, New York, New York 10019.

IN CONSIDERATION of mutual promises hereinafter set forth and other good and valuable consideration, the parties do hereby agree:

1. Publisher employs Writer to render his exclusive services as an author, composer, arranger and adapter of musical compositions, and Writer accepts such exclusive employment. Writer agrees not to write, compose, arrange or adapt musical compositions for anyone other than Publisher during the term of this agreement. However, Writer may write, compose, arrange and/or adapt musical compositions for motion picture scores, for musical plays, for phonograph recordings which are produced by Writer, and for Writer's own performances as an artist; provided, however, that all such musical compositions shall upon creation be the sole and exclusive property of Publisher upon all terms and conditions provided in this agreement. Writer further agrees to devote the necessary time, attention, skill and energy to his employment hereunder and to render his services diligently and to the best of his ability, to the end that the intent and purposes of this agreement may be fully realized and achieved. Writer may not be required by Publisher to render services hereunder at any particular times or at any particular places.

2. All musical compositions, including, without limitation, the lyrics, music, titles thereof and characters described therein (hereinafter referred to as "the Compositions") written, composed, arranged or adapted in whole or in part by Writer during the term of this agreement shall upon creation be the sole and exclusive property of Publisher, together with all copyrights and all copyright rights therein, as well as all other rights of whatsoever nature therein, whether now in existence or hereafter to come into existence. However, Writer reserves all rights of copyright renewal in the Compositions, except as set forth in renewal rider attached.

3. Attached hereto and marked Schedule "A" is a list of none (--0-) musical compositions (hereinafter referred to as the "Prior Compositions") written and composed by Writer individually or in collaboration with another or others prior to the term hereof and not previously assigned in whole or in part to a third party. With respect to the Prior Compositions, Writer hereby grants to Publisher all the same rights, and Publisher hereby assumes all of the same duties, as are set forth herein with respect to the Compositions. The Compositions and the Prior Compositions shall hereinafter be jointly referred to as "the Musical Compositions".

4. In clarification of the grant of rights set forth in Paragraphs 2 and 3 of this agreement, it is understood that:

(A) Writer authorizes and empowers Publisher, and appoints Publisher his true and lawful attorney, to obtain pursuant to law and for Publisher's benefit, the copyrights in the Musical Compositions for the original term thereof, and to execute in Writer's name all documents and instruments necessary or desirable to accomplish and perfect such grant of rights for the original term and to evidence Publisher's proprietary interest therein. This power is acknowledged by Writer to be coupled with an interest and irrevocable.

(B) Writer authorizes and empowers Publisher to make or authorize such changes, adaptations, arrangements, editions, transpositions and dramatizations of the Musical Compositions, and to set or reset words to music and music to words and to title or retitle any Musical Composition, as Publisher shall deem desirable, to the end that the Musical Compositions may be made more suitable and adaptable for use, promotion and exploitation throughout the world.

5. Writer shall prepare and deliver to Publisher completed manuscripts and lead sheets of each Composition written, composed, arranged or adapted by Writer immediately upon completion thereof, and shall prepare and deliver to Publisher completed manuscripts, lead sheets and recordings (if any) of each Prior Composition, simultaneously with the execution of this agreement. Upon delivery of each Musical Composition, Writer and Publisher shall execute an individual songwriters agreement (in the form of Exhibit "B" annexed hereto and made a part hereof) with respect thereto, which agreement (except in the event of any inconsistency with the provisions of this agreement) thereafter shall define and govern the relationship between Writer and Publisher with respect to such Musical Composition, and Publisher hereby agrees to pay the consideration therein stated to be payable to Writer in consideration for the rights herein granted to Publisher. Writer thereafter also shall execute and deliver to Publisher such documents and instruments with respect to such Musical Composition as Publisher in its judgment may deem necessary or desirable to effectuate the intent and purpose of this agreement or to evidence the rights granted to Publisher herein. Notwithstanding the foregoing, if Writer fails or is unable to execute any such individual songwriters agreement or other document or instrument not inconsistent with the terms hereof, Publisher shall be fully entitled to do so on Writer's behalf pursuant to the power-of-attorney granted herein, and such agreement, document or instrument thereupon shall be fully as valid, effective and operative as if personally executed by Writer.

6. Writer shall not (during the term of this agreement) collaborate as a writer, composer, arranger or adaptor of musical compositions with any person(s), unless such collaboration(s) takes place with Publisher's express approval pursuant to written terms and conditions acceptable to Publisher.

7. Publisher shall have the right to use and to allow others to use Writer's name and likeness, and biographical material concerning him, in connection with Publisher's business in general and with the use, promotion and exploitation of the Musical Compositions in particular. Writer shall have a right of prior approval of such likenesses of Writer, and of

advertising and publicity copy concerning Writer which is issued by Publisher or under its control, but such approval shall not be unreasonably withheld. Any likenesses and biographical material furnished by Writer shall be deemed approved. Any likenesses and biographical material furnished by Publisher shall be deemed approved unless disapproved by Writer within two (2) weeks after it is submitted to Writer by Publisher.

8. The extent of exploitation of any Musical Composition, including the publication of sheet music or other printed editions, or the decision to refrain therefrom, shall be entirely within the discretion of Publisher.

9. Writer shall render his exclusive services as a songwriter to Publisher for a term beginning on the date of this agreement and ending five (5) years thereafter.

Inasmuch as Writer's services are unique and extraordinary Writer acknowledges that Publisher shall be entitled to equitable relief (in addition to all other available rights and remedies) to enforce the provisions of this Paragraph 9, provided, however, that any injunctive relief obtained against Writer shall not extend beyond the field for which Writer is employed hereunder and shall not extend beyond the term of this agreement as provided above.

If for any reason Writer fails or refuses to render his services as provided in this agreement, Publisher (without limiting any other rights it may have) shall be entitled in its discretion to extend the term of this agreement for a period of time equal to the period(s) during which such failure or refusal continues.

The termination of Writer's exclusive employment hereunder shall not in any way affect the respective rights and obligations of Writer and Publisher with respect to the Musical Compositions. The individual songwriter agreements as well as the relevant provisions of this agreement shall continue in full force and effect with respect thereto.

10. Writer warrants that he is now, and agrees to remain throughout the term of this agreement and any extension thereof, a writer affiliate of Broadway Music, Inc.

11. Writer represents and warrants:

(A) The musical Compositions are or will be new and original and will not infringe upon or unfairly compete with any other works, compositions, arrangements or material and will not violate, invade, infringe upon or interfere with any rights of any third party.

(B) Writer has the full right, power and authority to make this agreement, perform its terms and conditions, furnish his services hereunder, and to grant to Publisher all rights which are the subject of this agreement, free and clear of all claims, rights and obligations whatsoever.

12. Writer acknowledges that this agreement is reasonable and provident. In the event that Writer is a minor, Writer agrees to cause Writer's parent or guardian to

execute the letter of consent annexed hereto as Exhibit "C" and further agrees to cooperate with Publisher to the fullest extent in obtaining judicial approval of this agreement, should Publisher elect to do so.

13. (A) Writer hereby indemnifies Publisher against any cost, expense, loss or damage (including attorneys' fees) arising out of or connected with any claim resulting from any breach or alleged breach by Writer of the warranties, representations or covenants made by Writer in this agreement. Similarly, Publisher hereby indemnifies Writer against any cost, expense, loss or damage (including attorneys' fees) arising out of or connected with any claim resulting from any breach, or alleged breach by Publisher of the warranties, representations or covenants made by Publisher in this agreement.

(B) The decision as to whether any claim should be made or any legal action should be brought against any alleged infringer of Publisher's rights hereunder shall be made solely by Publisher. Publisher agrees to pay to Writer a sum equal to Fifty Percent (50%) of any net recovery obtained by it as a result of such claim or legal action, after deduction of Publisher's expenses in connection therewith.

(C) If a claim is presented against Publisher in which it is asserted that the Musical Composition infringes upon or violates or interferes with the rights of any person, firm or corporation, the Publisher shall notify Writer of such claim and Writer, at his sole expense and cost, may assume or participate in the defense of any such claim by counsel of Writer's choice, but Publisher shall not settle such claim without first notifying Writer thereof; if Writer objects to such settlement, then such settlement shall not be made if Writer assumes the defense of such claim and all expenses and costs thereof.

14. In the event that, at any time, Publisher claims that a musical composition was written, composed, adapted or arranged by Writer during the term of this agreement and should therefore be considered a Composition, all rights in which belong to Publisher hereunder, and Writer claims otherwise, then if no copyright application for such musical composition was appropriately filed in Washington, D.C. prior to the date of this agreement, Writer shall have the burden of proving that such musical composition was not written, composed, adapted or arranged by him during the term of this agreement and is not one which should belong to Publisher pursuant to the terms hereof.

15. In view of the unique and extraordinary character of the services to be rendered by Writer hereunder, neither this agreement nor any of Writer's obligations hereunder shall be assignable by him, but Writer shall have the right to assign all or any payments becoming due to Writer hereunder. Publisher shall have the right to assign this agreement or the Musical Compositions, and the right to assign or license any of the rights herein granted to any person, firm or corporation.

16. The agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York applicable to agreements made and to be wholly performed therein.

17. (A) Writer agrees that during the term of this agreement, Writer shall not directly or indirectly own, manage, operate, join, control or participate in the ownership, management or control of, or in any manner or way be connected with or enter upon or engage in the field of music publishing, either as an individual on his own account or as a partner or joint venturer, or as an employee or agent for any person, or as an officer, director or stockholder of a corporation or otherwise (except as a holder of not more than Ten Percent (10%) of the stock of a publicly-held corporation). This covenant on the part of the Writer shall be construed as an agreement independent of any other provision in this agreement, and the existence of any claim or cause of action of the Writer against the Publisher, its successors or assigns, whether predicated on this agreement or otherwise, shall not constitute a defense to the enforcement of this covenant.

(B) In the event the scope of the foregoing covenant is deemed by an applicable authority to exceed that which is permissible, Writer and Publisher agree that the scope of the foregoing covenant shall be deemed automatically reduced to the extent permitted by applicable law.

(C) If any portion of the foregoing covenant is deemed by an applicable authority to be contrary to law, the portion thereof which is not deemed contrary to law shall be deemed to be the covenant of the undersigned.

18. This agreement sets forth the entire agreement between the parties, and no modification, amendment, waiver, termination or discharge of this agreement or any provisions thereof shall be binding unless confirmed by a written instrument signed by the party sought to be charged. No waiver of any provision of or default under this agreement shall affect Publisher's right thereafter to enforce such provision or to exercise any right or remedy in the event of any other similar or dissimilar default.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed on the date first indicated above.

Golden Robert Cassatta aka [illegible]
"Writer"

CHARDON MUSIC, INC.

By [illegible]

_____ (hereinafter referred to as "Writer")

whose address is _____

A88

_____ and _____

(hereinafter referred to as "Publisher"), whose address is _____

_____

1. In consideration of the royalties payable to Writer hereunder, Writer hereby assigns, transfers and delivers to Publisher the musical composition entitled

*

(hereinafter referred to as the "Musical Composition") including without limitation all rights of whatsoever nature in and to the title, words and music thereof and all copyrights therein, and the right to secure such rights in the name of Publisher for Publisher's own use and benefit, throughout the world, for the respective maximum terms of protection available throughout the world.

2. In further consideration of the royalties payable to Writer hereunder, Writer hereby authorizes and empowers Publisher to renew the copyright in the Musical Composition, pursuant to law, for him and in his name, and to execute in his name an assignment to Publisher of any renewal copyright obtained thereby for Publisher's own use and benefit. The power hereby granted to Publisher is acknowledged by Writer to be coupled with an interest on Publisher's part and irrevocable.

*

3. Writer warrants and represents that: he is a member of ASCAP; he is affiliated with BMI; that the music, lyrics and title of the Musical Composition were created by him alone and are wholly new and original; that all copyrights therein are valid and subsisting; and that neither the music nor the lyrics, nor the title of the Musical Composition nor any part thereof, infringe upon or violate or interfere with the rights of any person, firm or corporation. Writer further warrants and represents that he has not sold, assigned, leased, licensed or in any other way disposed of or encumbered any rights in the Musical Composition and that he has the right to make this agreement.

4. So long as Publisher's rights hereunder continue and Writer is not in breach of this agreement, Publisher agrees to pay the following royalties to Writer with respect to the Musical Composition:

*

(a) (i) Five Cents (5¢) per copy for each regular piano-forte copy sold by Publisher in the United States or Canada.

(ii) Ten Percent (10%) of the wholesale selling price (after discounts if any) of each printed copy (other than regular piano-forte copies) sold by Publisher in the United States or Canada, except that in the event that the Musical Composition is used in whole or in part in a printed compilation of musical compositions, Writer shall be entitled to receive only that proportion of Ten Percent (10%) which the number "one" bears to the total number of musical compositions or parts thereof (including the Musical Composition) contained in such printed compilation.

(iii) Publisher shall not be required to pay royalties on copies of the Musical Composition which are sold but for which Publisher does not receive payment or on copies which are returned or on professional or complimentary copies or on copies which are distributed at or below Publisher's cost.

(b) Fifty Percent (50%) of all net sums actually received by Publisher by reason of the exercise in the United States or Canada of mechanical, electrical, transcription, reproduction, motion picture, television, printing (other than as provided above) or any other rights (except public performance rights) therein.

(c) Fifty Percent (50%) of all net sums actually received by Publisher by reason of the exercise outside of the United States and Canada of mechanical, electrical, transcription, reproduction, motion picture, television, printing or any other rights (except public performance rights) therein.

5. It is expressly understood and agreed that Writer will receive his public performance royalties throughout the world directly from the performing rights society of which he is a member or with which he is affiliated. Writer acknowledges that he is not entitled to any share of the monies distributed to Publisher by any performing rights society.

6. In the event that "Writer" includes more than one person, all representations, warranties, grants and obligations made or undertaken by Writer shall be deemed jointly and severally made or undertaken, and the royalties payable hereunder shall be divided among such persons as follows:

NAME	SHARE
_____	_____
_____	_____
_____	_____

BEST COPY AVAILABLE

7. Publisher agrees that within forty-five (45) days after the last days of June and December in each year, it will prepare and furnish statements to Writer of royalties due hereunder, and each such statement shall be accompanied by payment of all sums shown to be due by such statements. All statements rendered by Publisher to Writer will be binding upon Writer and not subject to objection by Writer for any reason unless specific objection in writing, stating the basis thereof, is received by Publisher within one (1) year from the date rendered, in which event such statements shall be binding in all respects except those specifically stated in such written objections.

8. Publisher shall have the right to use the Writer's name, likeness and biographical material concerning him, in connection with the Publisher's business in general and with the use, promotion and exploitation of the Musical Composition in particular.

9. The extent and manner of exploitation of the Musical Composition shall be entirely within the discretion of Publisher, it being further expressly understood that Publisher may charge such fees and rates for the exercise of the rights hereby granted to Publisher as Publisher, in its sole discretion, deems advisable.

10. (a) Writer hereby indemnifies Publisher against any cost, expense, loss or damage (including attorney's fees) arising out of or connected with any claim in which it is asserted that any of the representations, warranties, or covenants made by Writer in this agreement have been breached or in which assertions are made which are inconsistent with any of such representations, warranties, or covenants.

(b) The decision as to whether any claim should be made or any legal action should be brought against any alleged infringer of the Musical Composition shall be made solely by Publisher. Publisher agrees to pay to Writer a sum equal to Fifty Percent (50%) of any net recovery obtained by Publisher as a result of such claim or legal action, after deduction of Publisher's legal and other expenses in connection therewith.

(c) If a claim is presented against Publisher in which it is asserted that the Musical Composition infringes upon or violates or interferes with the rights of any person, or business entity, Publisher shall notify Writer of such claim, and Writer, at his sole expense, may participate in the defense of such claim; but Publisher shall have the absolute right to control the defense and to settle or otherwise dispose of such claim in any manner which Publisher may determine.

(d) During the pendency of any proceeding or claim referred to in subdivision (a) of this paragraph, Publisher may withhold royalties due to Writer up to the maximum amount claimed, plus provision for attorneys' fees and other costs and expenses, and may apply such withheld royalties in satisfaction of Writer's obligation to indemnify Publisher pursuant to subdivision (a) of this paragraph.

11. Publisher shall have the right to assign this agreement or to assign or license any rights in the Musical Composition to any person or business entity.

12. As a condition precedent to the assertion by Writer that Publisher is in default in performing any obligation contained herein, Writer shall advise Publisher thereof in detail and in writing, and Publisher shall be allowed a period of sixty (60) days after receipt of such written notice within which to cure such alleged default. Writer agrees that no breach of this agreement by Publisher shall be deemed incurable.

13. All notices and payments hereunder shall be sent to the parties at the addresses indicated at the beginning of this agreement, unless either party changes such mailing address by giving written notice thereof, to the other.

14. This agreement shall be construed in accordance with the law of the State of New York applicable to agreements executed and wholly to be performed therein, and shall be binding upon and inure to the benefit of the parties' respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first indicated above.

_____ (Publisher)

By: _____

_____ (Writer)

_____ (Writer)

_____ (Writer)

A90

RENEWAL RIDER ANNEXED TO EXCLUSIVE SONGWRITERS' AGREEMENT DATED

BETWEEN WALDEN ROBERT CASSOTTO, PROFESSIONALLY KNOWN AS BOBBY DARIN, AND CHARDON MUSIC, INC.

The parties are informed and understand that changes in the Copyright Laws of the United States are imminent, particularly as to the overall duration of copyright protection and the nature or form of the periods of copyright (i.e., as alternatives to the present provision for original and renewal periods each of 28 years' duration, legislation has been suggested that there be a single period measured by a fixed number of years or the life of the author, or that there be a combination of original and renewal periods but of different duration from that presently in effect).

Since such changes may become effective during the term of this agreement, the parties desire to fix their rights, so far as possible, in contemplation of and in conformity therewith. Accordingly, in clarification of the foregoing terms of this agreement, as to the duration of the conveyance of rights to the Publisher and the payments to which the Writer shall be entitled, it is the stated intention of the parties (and this agreement shall be construed to effect such intention, so far as the same shall be lawful) as follows:

1. In the event that the Copyright Law shall be changed so as to provide for (a) an original period of copyright (if there shall also be provision for a renewal period), or (b) a single period of copyright protection, which shall be for a period of 28 years or more, the rights granted to the Publisher under this agreement and Exhibit "B" as to each Composition shall continue for the term of such original period or single period up to, but in no event longer than, the first 36 years thereof from the date of the first publication in the United States, without payment by the Publisher of any consideration other than that provided by Exhibit "B".

2. In the event that the Copyright Law shall be changed so as to provide for an original period of copyright

(if there shall also be provision for a renewal period extending copyright protection for an overall period of more than 28 years) of less than 28 years, the rights granted to the Publisher under this agreement and Exhibit "B" as to each Composition shall nevertheless continue for a fixed term of 28 years, including all or part of the renewal term, without payment by the Publisher of any consideration other than that provided by Exhibit "B", provided that the Publisher may lawfully, under the Copyright Laws then prevailing, by such payment retain its rights in the Composition for such period.

3. (A) Anything in this agreement contained to the contrary notwithstanding, upon the expiration of (a) the original term of copyright if such term shall be of at least 28 years' duration, or (b) upon the expiration of 28 years if the original term of copyright shall be less than 28 years, or (c) if there shall be a single period of copyright of more than 36 years' duration applicable to a Composition at the expiration of 36 years, the Publisher shall have the option, in its sole and absolute discretion, to purchase all rights in the Composition and the copyright or renewal copyright thereof, for (a) the entire renewal period, or (b) the entire period of copyright protection afforded by law for any period in excess of 36 years, as the case may be, upon payment to the Writer at the time of conveyance thereof of a bonus (which shall be non-returnable and shall not be subject to recoupment) of the greater of the sum of $250.00 or a sum to be computed on the basis of the following formula:

5X Annual Average of BMI Logged U.S. Performances as shown on statements for last 7 years available X the then prevailing BMI Writer's rate per performance.

(B) The Publisher's option to purchase shall be exercisable by written notice to the Writer of its intention to exercise the same, sent to the Writer's last known address by certified mail not later than six months before the expiration of the initial term for which the rights in the Composition were conveyed to the Publisher.

(C) The Writer agrees to execute and to use his best efforts to cause his wife, children and any other persons having an interest in the rights herein granted to execute any and all documents necessary and proper to effectuate the rights herein granted, and does further hereby irrevocably constitute and appoint the Publisher or any of its officers, directors or general manager, his attorney and representative, in the name of the Writer, or in the name of the Publisher, its successors and assigns, to make, sign, execute, acknowledge and deliver any and all instruments which may be desirable or necessary in order to vest in the Publisher, its successors and assigns, any of the rights hereinabove referred to.

(D) In the event that any of the foregoing provisions shall become unlawful or impossible of performance because of a change in the Copyright Law, the Publisher shall have the irrevocable first option to retain or secure the rights hereinabove granted upon compliance with the minimum requirements imposed by law which shall be sufficient lawfully to enable the Publisher to retain or secure the

same, as the case may be.

(E) Wherever a certain period of years is used above, such period shall run from the date of first publication in the United States.

(F) Nothing herein contained shall be deemed to be in derogation of the Publisher's rights in and to the Compositions for the full duration of the copyrights therein outside the United States.

Walden Robert Cassotto aka Bobby Darin

WALDEN ROBERT CASSOTTO,
professionally known as BOBBY DARIN

CHARDON MUSIC, INC.

By _____

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION	:	
Plaintiff,	:	CIVIL ACTION FILE NO. 2779-69
v.	:	
COMMONWEALTH UNITED CORPORATION	:	COMPLAINT FOR INJUNCTION
Defendant.	:	
	:	

On information and belief it appears to the plaintiff, the Securities and Exchange Commission ("Commission"):

1. Defendant Commonwealth United Corporation ("CUC") has engaged and is engaging in acts and practices which constitute violations of Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b) and 78n(a), and Rules 10b-5 and 14a-9 thereunder, 17 CFR 240.10b-5 and 240.14a-9. The plaintiff, pursuant to Section 21(e) of the Exchange Act, 15 U.S.C., 78u(e), brings this action to enjoin such acts and practices.

2. The defendant will, unless restrained and enjoined, continue to engage in the acts and practices set forth in this complaint and in acts and practices of similar purport and object.

3. This Court has jurisdiction of this action under Section 27 of the Exchange Act, 15 U.S.C. 78aa.

4. Certain acts and practices constituting the violations alleged herein have occurred within the jurisdiction of the United States District Court for the District of Columbia.

5. Defendant CUC is incorporated under the laws of the State of Delaware. CUC's executive offices are located at 8920 Wilshire Boulevard, Beverly Hills, California.

6. The defendant CUC, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts and practices alleged herein.

COUNT ONE

Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5

7. The defendant CUC has had a long standing relationship with Kleiner, Bell & Co., Incorporated ("Kleiner, Bell"), a broker-dealer registered with the Commission since May 5, 1967. During 1968 and 1969, Kleiner, Bell served as a dealer-manager, financial consultant and investment banker for defendant CUC. In addition, there have been numerous business and other transactions between defendant CUC and certain principals of Kleiner, Bell.

8. On or about February 3, 1969, defendant CUC filed with the Commission a registration statement for a public offering of securities in connection with a proposed exchange offer for securities of Warner Brothers - Seven Arts Limited. Although said registration statement was subsequently withdrawn, it was false and misleading in that it omitted to state material facts concerning, among other things:

a. The nature and extent of defendant CUC's relationship with Kleiner, Bell and its principals in connection with, among other things, the transactions described in paragraphs 8(b) - 8(d) below.

b. The particulars of a real estate transaction whereby, on December 31, 1968, defendant CUC completed the purchase of certain real estate located in Hawaii and on the same day completed the sale of the property to principals of Kleiner, Bell, including such matters as:

1. the identity of the purchasers of the property;

2. the fact that the purchase and sale of the property were consummated on the same day;

3. the fact that of the $541,000 cash payment made by the purchasers at the closing, only $50,000 represented payment toward the purchase price and the remainder represented prepaid interest;

4. the fact that defendant CUC was obligated to pay improvement costs on the property; and

5. the fact that in event of default resulting in foreclosure and sale, defendant CUC could look only to the property for satisfaction of the note and the purchasers were not personally liable for any deficiency.

c. The particulars of a transaction whereby on December 31, 1968, defendant CUC sold to principals of Kleiner, Bell, all of the issued and outstanding stock of a subsidiary whose only asset was certain property located in Worcester, Massachusetts, which had been acquired by defendant CUC in September 1968, including such matters as:

1. the identity of the purchasers of the stock;

2. the fact that of the $281,500 cash payment made by the purchasers at closing, only $20,000 represented payment toward the purchase price and the remainder represented prepaid interest; and

3. the fact that in event of default resulting in foreclosure and sale, defendant CUC could look only to the stock sold, which was pledged as collateral, for satisfaction of the note and the purchasers were not personally liable for any deficiency.

d. The full terms and circumstances surrounding the purchase by defendant CUC in January 1969 of all the issued and outstanding shares of preferred stock of George A. Fuller Company, Inc. ("Fuller"), including such matters as:

1. the fact that principals of Kleiner, Bell acquired 80% of Fuller's common stock at the same time;

2. the existence and terms of a tacit agreement made at the same time whereby defendant CUC agreed to buy at some future time and under certain circumstances the common stock interest acquired by principals of Kleiner, Bell; and

3. the total consideration paid or to be paid by defendant CUC for the Fuller preferred stock.

9. By reason of the activities described in paragraph 8 above, defendant CUC violated Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5.

COUNT TWO

Section 14(a) of the Exchange Act, 15 U.S.C. 78n(a), and Rule 14a-9 thereunder, 17 CFR 240.14a-9

10. Plaintiff realleges and incorporates by reference herein paragraph 7 of this Complaint.

11. On or about June 24, 1969, defendant CUC did mail and otherwise distribute to shareholders and others a proxy statement and notice of annual meeting which had been previously filed with the Commission. Said proxy statement was false and misleading in that it omitted to state material facts and failed to disclose fully and accurately material facts concerning, among other things:

a. The aggregate fees paid or agreed to be paid to Kleiner, Bell, including the existence and terms of an agreement by defendant CUC to pay Kleiner, Bell a $200,000 fee in connection with a proposed exchange offer for the stock of Warner Bros.-Seven Arts Limited.

b. The particulars of a proposed financing arrangement with IOS, Ltd. (S.A.) ("IOS") and its affiliates in connection with the acquisition by defendant CUC of the Rexall operations of Dart Industries, Inc., including such matters as:

1. the identity of the parties to supply the proposed financing; and

2. complete information concerning finder's fees and other costs to be paid in connection with proposed financing.

c. The full circumstances concerning defendant CUC's financial condition, including such matters as:

1. defendant CUC's difficulties in meeting certain of its obligations, including but not limited to its ability to pay the principal amount of certain loans in accordance with the arrangements made with lenders; and

2. the fact that certain banks and certain other financial institutions which had extended continuing lines of credit to the company had refused to renew such lines of credit thereby limiting defendant CUC in its conduct of its business activities.

d. In connection with the Fuller transaction described in paragraph 8 (d) above, the information alleged in paragraphs 8(d)(2) and 8(d)(3).

12. By reason of the activities described in paragraph 11 above, defendant has violated and is violating Section 14(a) of the Exchange Act, 15 U.S.C. 78n(a), and Rule 14a-9 thereunder, 17 CFR 240.14a-9.

WHEREFORE, the Commission, plaintiff herein, respectfully demands:

I. A final judgment of permanent injunction restraining and enjoining defendant CUC and its officers, directors, agents, servants, employees, and assignees, and persons or entities having control relationship with them and any other persons acting in concert or participation with them, directly or indirectly, by use of the mails and of the means or instrumentalities of interstate commerce:

a. From making false and misleading statements, omitting to state all material facts and failing to disclose fully and accurately all material facts in filings required to be made or in fact made with the Commission by defendant CUC in connection with the offer or proposed offer of any securities, or from engaging in any other activities in connection with defendant CUC in violation of Section 10(b) of the Exchange Act and the Rules and Regulations thereunder; and

B. From the filing with the Commission or the issuance or dissemination of proxy soliciting materials of defendant CUC in connection with the 1969 annual meeting or any future annual or other meetings or for any other purpose which do not comply with Section 14(a) of the Exchange Act and the Rules and Regulations thereunder.

II. That, as part of the final relief, a mandatory order be entered by the Court prohibiting the use of any and all proxies obtained by defendant CUC by means of the proxy statement and notice of the annual meeting previously mailed and otherwise distributed to shareholders of defendant CUC on June 24, 1969.

III. Such other further relief as the Court deems appropriate.

Respectfully submitted

Stanley Sporkin
Associate Director

Leonard H. Rossen
Branch Chief

Jeffrey P. Somers
Attorney

Theodore A. Levine
Attorney

DATED: October / , 1969

Attorneys for the SECURITIES AND EXCHANGE COMMISSION

500 North Capitol Street
Washington, D. C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

GERALD LIPSKY, executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a BOBBY DARIN) deceased, : Docket No. M-19-95

Plaintiff, :

-against- : 70 Civ. 5030

COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION and STREET SONGS, INC. : NOTICE OF MOTION

Defendants. :

- X

S I R S:

PLEASE TAKE NOTICE that upon the Amended Unified Complaint of the plaintiff, the annexed Complaint for Injunction, Consent and Judgment for Permanent Injunction in an action entitled: Securities and Exchange Commission v. Commonwealth United Corporation, in the United States District Court, District of Columbia, Civil Action No. 2779-69, and all prior proceedings in Docket No. M-19-95, defendants Iota Industries, Inc. and Commonwealth United Music, Inc. by their undersigned attorneys, will move this Court at a time and place to be fixed by this Court for an order, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, striking from said Amended Unified Complaint Exhibit C thereof and the following allegations therein:

1. in paragraph 10:

"Material omissions from such registration statement were cited in the complaint filed by the Commission in an action commenced against

CUC in the United States District Court for the District of Columbia on October 2, 1969 to enjoin CUC from, inter alia:

> "making false and misleading statements, omitting to state all material facts, and failing to disclose fully and accurately all material facts in filings required to be made or, in fact, made with the Commission by defendant CUC in connection with the offer or proposed offer to any securities, or from engaging in any other activities in connection with defendant CUC in violation of Section 10(b) of the Exchange Act and the Rules and Regulations thereunder."

A copy of the complaint in said action is hereto annexed as Exhibit C and expressly made a part hereof."

2. in paragraph 11:

"Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the February 3, 1969 registration statement, in that said Amendment, inter alia, (i) omitted to state material facts as specified in paragraphs 8(b)(2), 8(b)(3), 8(c)(2), 8(d)(2) and 8(d)(3) of Exhibit C."

3. in paragraph 13:

"Material omissions from such proxy statement were cited by the Commission in its aforesaid complaint against CUC."

4. in paragraph 14:

"Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the proxy statement mailed by CUC on June 24, 1969 to its stockholders in that said Amendment, inter alia, omitted to state material facts and failed to disclose fully and accurately material facts as specified in paragraphs 11(a)-(d) of Exhibit C."

on the ground that said Exhibit C and the said allegations are impertinent and immaterial.

Dated: New York, New York
August 28, 1974

Yours, etc.,

TOWNLEY, UPDIKE, CARTER & RODGERS

By: _____
A Member of the Firm
220 East 42nd Street
New York, New York 10017
Tel. No.: (212) 682-4567

TO:

PATTERSON, BELKNAP & WEBB
Attorneys for Plaintiff
30 Rockefeller Plaza
New York, New York 10020

LORD, DAY & LORD
Attorneys for Defendants
Hudson Bay Music Company,
Alley Music Corporation
and Street Songs, Inc.
25 Broadway
New York, New York 10004

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

A102

SECURITIES AND EXCHANGE COMMISSION 500 N Capitol Street Washington D.C. Plaintiff,	:	CIVIL ACTION FILE NO. 2779-69
v.	:	
COMMONWEALTH UNITED CORPORATION Defendant.	:	COMPLAINT FOR INJUNCTION

FILED
OCT 2 1969
ROBERT M. STEARNS, Clerk

On information and belief it appears to the plaintiff, the Securities and Exchange Commission ("Commission"):

1. Defendant Commonwealth United Corporation ("CUC") has engaged and is engaging in acts and practices which constitute violations of Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b) and 78n(a), and Rules 10b-5 and 14a-9 thereunder, 17 CFR 240.10b-5 and 240.14a-9. The plaintiff, pursuant to Section 21(e) of the Exchange Act, 15 U.S.C., 78u(e), brings this action to enjoin such acts and practices.

2. The defendant will, unless restrained and enjoined, continue to engage in the acts and practices set forth in this complaint and in acts and practices of similar purport and object.

3. This Court has jurisdiction of this action under Section 27 of the Exchange Act, 15 U.S.C. 78aa.

4. Certain acts and practices constituting the violations alleged herein have occurred within the jurisdiction of the United States District Court for the District of Columbia.

5. Defendant CUC is incorporated under the laws of the State of Delaware. CUC's executive offices are located at 8920 Wilshire Boulevard, Beverly Hills, California.

6. The defendant CUC, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts and practices alleged herein.

COUNT ONE

Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5

7. The defendant CUC has had a long standing relationship with Kleiner, Bell & Co., Incorporated ("Kleiner, Bell"), a broker-dealer registered with the Commission since May 5, 1967. During 1968 and 1969, Kleiner, Bell served as a dealer-manager, financial consultant and investment banker for defendant CUC. In addition, there have been numerous business and other transactions between defendant CUC and certain principals of Kleiner, Bell.

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4/24/70
ROBERT M. STEARNS, Clerk,
By, [illegible]
Deputy Clerk

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8. On or about February 3, 1969, defendant CUC filed with the Commission a registration statement for a public offering of securities in connection with a proposed exchange offer for securities of Warner Brothers - Seven Arts Limited. Although said registration statement was subsequently withdrawn, it was false and misleading in that it omitted to state material facts concerning, among other things:

a. The nature and extent of defendant CUC's relationship with Kleiner, Bell and its principals in connection with, among other things, the transactions described in paragraphs 8(b) - 8(d) below.

b. The particulars of a real estate transaction whereby, on December 31, 1968, defendant CUC completed the purchase of certain real estate located in Hawaii and on the same day completed the sale of the property to principals of Kleiner, Bell, including such matters as:

1. the identity of the purchasers of the property;

2. the fact that the purchase and sale of the property were consummated on the same day;

3. the fact that of the $541,000 cash payment made by the purchasers at the closing, only $50,000 represented payment toward the purchase price and the remainder represented prepaid interest;

4. the fact that defendant CUC was obligated to pay improvement costs on the property; and

5. the fact that in event of default resulting in foreclosure and sale, defendant CUC could look only to the property for satisfaction of the note and the purchasers were not personally liable for any deficiency.

c. The particulars of a transaction whereby on December 31, 1968, defendant CUC sold to principals of Kleiner, Bell, all of the issued and outstanding stock of a subsidiary whose only asset was certain property located in Worcester, Massachusetts, which had been acquired by defendant CUC in September 1968, including such matters as:

1. the identity of the purchasers of the stock;

2. the fact that of the $281,500 cash payment made by the purchasers at closing, only $20,000 represented payment toward the purchase price and the remainder represented prepaid interest; and

3. the fact that in event of default resulting in foreclosure and sale, defendant CUC could look only to the stock sold, which was pledged as collateral, for satisfaction of the note and the purchasers were not personally liable for any deficiency.

d. The full terms and circumstances surrounding the purchase by defendant CUC in January 1969 of all the issued and outstanding shares of preferred stock of George A. Fuller Company, Inc. ("Fuller"), including such matters as:

1. the fact that principals of Kleiner, Bell acquired 80% of Fuller's common stock at the same time;

2. the existence and terms of a tacit agreement made at the same time whereby defendant CUC agreed to buy at some future time and under certain circumstances the common stock interest acquired by principals of Kleiner, Bell; and

3. the total consideration paid or to be paid by defendant CUC for the Fuller preferred stock.

9. By reason of the activities described in paragraph 8 above, defendant CUC violated Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5.

COUNT TWO

Section 14(a) of the Exchange Act, 15 U.S.C. 78n(a), and Rule 14a-9 thereunder, 17 CFR 240.14a-9

10. Plaintiff realleges and incorporates by reference herein paragraph 7 of this Complaint.

11. On or about June 24, 1969, defendant CUC did mail and otherwise distribute to shareholders and others a proxy statement and notice of annual meeting which had been previously filed with the Commission. Said proxy statement was false and misleading in that it omitted to state material facts and failed to disclose fully and accurately material facts concerning, among other things:

a. The aggregate fees paid or agreed to be paid to Kleiner, Bell, including the existence and terms of an agreement by defendant CUC to pay Kleiner, Bell a $200,000 fee in connection with a proposed exchange offer for the stock of Warner Bros.-Seven Arts Limited.

b. The particulars of a proposed financing arrangement with IOS, Ltd. (S.A.) ("IOS") and its affiliates in connection with the acquisition by defendant CUC of the Rexall operations of Dart Industries, Inc., including such matters as:

1. the identity of the parties to supply the proposed financing; and

2. complete information concerning finder's fees and other costs to be paid in connection with proposed financing.

c. The full circumstances concerning defendant CUC's financial condition, including such matters as:

1. defendant CUC's difficulties in meeting certain of its obligations, including but not limited to its ability to pay the principal amount of certain loans in accordance with the arrangements made with lenders; and

2. the fact that certain banks and certain other financial institutions which had extended continuing lines of credit to the company had refused to renew such lines of credit thereby limiting defendant CUC in its conduct of its business activities.

d. In connection with the Fuller transaction described in paragraph 8 (d) above, the information alleged in paragraphs 8(d)(2) and 8(d)(3).

12. By reason of the activities described in paragraph 11 above, defendant has violated and is violating Section 14(a) of the Exchange Act, 15 U.S.C. 78n(a), and Rule 14a-9 thereunder, 17 CFR 240.14a-9.

WHEREFORE, the Commission, plaintiff herein, respectfully demands:

I. A final judgment of permanent injunction restraining and enjoining defendant CUC and its officers, directors, agents, servants, employees, and assignees, and persons or entities having control relationship with them and any other persons acting in concert or participation with them, directly or indirectly, by use of the mails and of the means or instrumentalities of interstate commerce:

a. From making false and misleading statements, omitting to state all material facts and failing to disclose fully and accurately all material facts in filings required to be made or in fact made with the Commission by defendant CUC in connection with the offer or proposed offer of any securities, or from engaging in any other activities in connection with defendant CUC in violation of Section 10(b) of the Exchange Act and the Rules and Regulations thereunder; and

B. From the filing with the Commission or the issuance or dissemination of proxy soliciting materials of defendant CUC in connection with the 1969 annual meeting or any future annual or other meetings or for any other purpose which do not comply with Section 14(a) of the Exchange Act and the Rules and Regulations thereunder.

II. That, as part of the final relief, a mandatory order be entered by the Court prohibiting the use of any and all proxies obtained by defendant CUC by means of the proxy statement and notice of the annual meeting previously mailed and otherwise distributed to shareholders of defendant CUC on June 24, 1969.

III. Such other further relief as the Court deems appropriate.

Respectfully submitted

Stanley Sporkin
Associate Director

Leonard H. Rossen
Branch Chief

Jeffrey P. Somers
Attorney

Theodore A. Levine
Attorney

DATED: October / , 1969

Attorneys for the SECURITIES AND EXCHANGE COMMISSION

500 North Capitol Street
Washington, D. C.
755-1790

C.A. 2773-69 A107

FILED

OCT 2 1969

ROBERT M. STEARNS, Clerk

CONSENT

The defendant Commonwealth United Corporation admits the jurisdiction of this Court, enters a general appearance, and without admitting the allegations of the Complaint, hereby consents to the entry of the within final judgment of permanent injunction against it, without further notice.

No tender, offer, promise or threat of any kind whatsoever has been made by plaintiff Securities and Exchange Commission, or any member, officer, agent or representative thereof in consideration for this consent.

Commonwealth United Corporation

By: Peter Gettinger

Attorney for defendant CUC

Dated: Washington, D. C.

City of Washington)
) ss
District of Columbia)

On this 1st day of October, 1969 before me personally appeared Peter Gettinger, to me known and known to me to be the person who executed the foregoing instrument and be acknowledged to me that he executed the same on behalf of Commonwealth United Corporation and that he was duly authorized and directed by said corporation to execute the foregoing instrument on its behalf.

Juanita L. Ward
Notary Public

My Commission Expires May 31, 1974

A TRUE COPY
ROBERT M. STEARNS, Clerk,
By
Deputy Clerk

FILED

OCT 2 1969 A108

ROBERT M. STEARNS, Clerk

CERTIFIED RESOLUTION

The undersigned, being the duly elected and acting Secretary of COMMONWEALTH UNITED CORPORATION, a Delaware corporation (the "Company"), hereby certifies that at a meeting of the Board of Directors of the Company held on the 24th day of July, 1969, at which meeting a quorum was present and acting throughout, the following resolution was duly adopted which resolution has not been amended or modified in any respect:

> RESOLVED, that the Company consent to the entry of an order in the United States District Court for the District of Columbia in a form to be proposed by the Securities and Exchange Commission and approved by Company counsel, enjoining the continued use of the Company's Proxy Statement dated June 24, 1969 and any proxies obtained in response thereto, the use of any Registration Statement or Amendment thereto filed with the Securities and Exchange Commission from and after November 27, 1968, and any further violations of the Securities Exchange Act of 1934 and the rules and regulations thereunder; and it is
>
> FURTHER RESOLVED, that the duly elected officers of the Company, or if such procedure is acceptable to the Securities and Exchange Commission, counsel for the Company be and hereby are authorized to execute such consents or other documents and take any other action as may be necessary to carry out the intentions of these Resolutions.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and affixed the seal of the Company the 30th day of September, 1969.

PETER GETTINGER

SECRETARY

(Title)

[SEAL]

A TRUE COPY

4/1/70

ROBERT M. STEARNS, Clerk,

By: _____

Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

A109

SECURITIES AND EXCHANGE COMMISSION Plaintiff, v. COMMONWEALTH UNITED CORPORATION Defendant.	CIVIL ACTION FILE NO. 2779-69 JUDGMENT FOR PERMANENT INJUNCTION

FILED
OCT 2 1969
ROBERT M. STEARNS, Clerk

Plaintiff, Securities and Exchange Commission ("Commission"), having filed a complaint herein and defendant Commonwealth United Corporation having, for purpose of this proceeding, admitted the jurisdiction of this Court, entered a general appearance without admitting the allegations of the complaint, waived entry of findings of fact and conclusions of law and consented to the entry of a permanent injunction enjoining said defendant Commonwealth United Corporation from engaging in acts and practices which constitute violations of Sections 10(b) and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78j(b) and 78n(a), and the Rules and Regulations thereunder in accordance with the demands made in the complaint for injunction herein and it further appearing that the Court has jurisdiction of the subject matter hereof and the parties hereto and the Court being fully advised of the premises: It is this 2nd day of October, 1969,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

The defendant Commonwealth United Corporation, its officers, directors, agents, employees and assignees, and persons or entities having a control relationship with it and any other persons acting in concert or participation with it is:

I. Hereby permanently enjoined, directly and indirectly, by use of the mails or of the means or instrumentalities of interstate commerce:

A TRUE COPY
4/1/70
ROBERT M. STEARNS, Clerk,
By [signature]
Deputy Clerk

(a) from making false and misleading statements, omitting to state all material facts, and failing to disclose fully and accurately all material facts in filings required to be made or, in fact, made with the Commission by defendant CUC in connection with the offer or proposed offer of any securities, or engaging in any other activities in connection with defendant CUC in violation of Section 10(b) of the Exchange Act and the Rules and Regulations thereunder; and

(b) from the filing with the Commission or the issuance or dissemination of proxy soliciting materials of defendant CUC in connection with the 1969 annual meeting or any future annual or other meeting or for any other purpose which do not comply with Section 14(a) of the Exchange Act and the Rules and Regulations thereunder.

II. Hereby prohibited from using any and all proxies obtained by defendant CUC by means of the proxy statement and notice of the annual meeting previously mailed and otherwise distributed to shareholders of Commonwealth United Corporation on June 24, 1969.

Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD LIPSKY, executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a BOBBY DARIN) deceased, Plaintiff, -against- COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION and STREET SONGS, INC., Defendants.	Docket No. M-19-95 COMMONWEALTH CASES Index No. 70 Civ. 5030 (FHMcF) NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the Amended Unified Complaint of the plaintiff, the Complaint, a copy of which is annexed to the Notice of Motion for the same relief requested herein made by defendants Iota Industries, Inc. and Commonwealth United Music, Inc. by their attorneys, Townley, Updike, Carter & Rodgers, for Injunction, Consent and Judgment for Permanent Injunction in an action entitled Securities and Exchange Commission v. Commonwealth United Corporation, in the United States District Court, District of Columbia, Civil Action No. 2779-69, and all prior proceedings in Docket No. M-19-95, defendants The Hudson Bay Music Company, formerly known as Alley-Street Music Venture, Alley Music Corporation and Street Songs, Inc., by their undersigned attorneys, will move this Court at a time and place to be fixed by this Court for an order, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, striking from said Amended Unified Complaint Exhibit C thereof and

the following allegations therein:

1. In paragraph 10:

"Material omissions from such registration statement were cited in the complaint filed by the Commission in an action commenced against CUC in the United States District Court for the District of Columbia on October 2, 1969 to enjoin CUC from, inter alia:

'making false and misleading statements, omitting to state all material facts, and failing to disclose fully and accurately all material facts in filings required to be made or, in fact, made with the Commission by defendant CUC in connection with the offer or proposed offer to any securities, or from engaging in any other activities in connection with defendant CUC in violation of Section 10(b) of the Exchange Act and the Rules and Regulations thereunder.'

"A copy of the complaint in said action is hereto annexed as Exhibit C and expressly made a part hereof."

2. In paragraph 11:

"Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the February 3, 1969 registration statement, in that said Amendment, inter alia, (i) omitted to state material facts as specified in paragraphs 8(b)(2), 8(b)(3), 8(c)(2), 8(d)(2) and 8(d)(3) of Exhibit C."

3. In paragraph 13:

"Material omissions from such proxy statement were cited by the Commission in its aforesaid complaint against CUC."

4. In paragraph 14:

"Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the proxy statement mailed by CUC on June 24, 1969 to its stockholders in that said Amendment, inter alia, omitted to state material facts and failed to disclose fully and accurately material facts as specified in paragraphs 11(a)-(d) of Exhibit C."

on the ground that said Exhibit C and the said allegations are impertinent and immaterial.

Dated: New York, New York
August 28, 1974

Yours, etc.

LORD, DAY & LORD
Attorneys for Defendants
THE HUDSON BAY MUSIC COMPANY, formerly known as ALLEY-STREET MUSIC VENTURE; ALLEY MUSIC CORPORATION and STREET SONGS, INC.

By /s/ Thomas F. Daly
A Member of the Firm
Office and P.O. Address
25 Broadway
New York, New York 10004

TO:

PATTERSON, BELKNAP & WEBB
Attorneys for Plaintiff
30 Rockefeller Plaza
New York, New York 10020

TOWNLEY, UPDIKE, CARTER & RODGERS
Attorneys for Defendants
Iota Industries, Inc. and
Commonwealth United Music, Inc.
200 East 42nd Street
New York, New York 10017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD LIPSKY, executor under the Will of (WALDEN ROBERT CASSOTTO) (a/k/a BOBBY DARIN) deceased,	:	
Plaintiff,	:	Docket No. M-19-95
-against-	:	70 Civ. 5030
COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION and STREET SONGS, INC.,	:	IOTA'S ANSWERS TO PLAINTIFF'S INTERROGATORIES
Defendants.	:	

Defendant Iota Industries, Inc. ("Iota"), for its answers to plaintiff's interrogatories dated November 30, 1973, states:

INTRODUCTION

Except for No. 1, plaintiff's interrogatories concern Registration Statement No. 2-30859 filed with the SEC on November 27, 1968, covering shares of Iota standing in plaintiff's name (the "Registration Statement"), and to Amendments Nos. 1 and 2 thereto, filed April 29 and June 27, 1969. As appears therefrom, the corporate officer in charge was Rodney W. Loeb, Vice President, Legal, whose office was at corporate headquarters in Beverly Hills, California. Mr. Loeb is no longer employed by Iota, the Beverly Hills office is closed, and such of the files of that office as survive are warehoused in Chicago, but a search of the indexes of these files shows that there is little therein which would enable present management to answer plaintiff's interrogatories.

Accordingly, the following answers are based entirely on the records of Golenbock and Barell ("G & B") and on information supplied by attorneys of that firm, as well as registration statements of Iota on file with the SEC. As appears from the Registration Statement, legal matters describing Iota therein were passed upon for Iota by that firm.

Iota does not understand the interrogatories to call for information protected by the attorney-client privilege, but if they are so intended, objection thereto is hereby made and no waiver of the privilege is intended by these answers.

Interrogatory No. 1

With respect to each security of Commonwealth United Corporation (CUC) registered, or sought to be registered, with the Securities and Exchange Commission (the Commission), state (a) the date when a registration statement was first filed with the Commission, (b) the date on which each amendment, if any, of such registration statement was filed with the Commission, (c) the effective date, if any, of such registration statement and (d) the amount and class of securities sought to be registered thereby.

Answer:

In 1961, Iota apparently filed a registration statement, No. 2-18605, but no copy thereof or information as to its contents is presently available to G & B or Iota. The registration statements and amendments thereto as to which G & B performed legal services are as follows:

1. Registration Statement No. 2-28045 filed January 17, 1968. Securities included: 3,546,733 shares of Common Stock; $21,642,440 principal amount of 5% Convertible Subordinated Debentures plus an indeterminate number of shares of Common Stock as may be issuable upon conversion of said Debentures or as may be issuable pursuant to anti-dilution provisions thereof.

Amendment No. 1 filed January 31, 1968. This registration statement became effective on January 31, 1968. Securities included: 2,886,733 shares of Common Stock; $21,642,440 principal amount of 5% Convertible Subordinated Debentures plus an indeterminate number of shares of Common Stock issuable upon conversion of said Debentures and pursuant to anti-dilution provisions thereof.

Post-effective Amendment No. 1 filed April 18, 1969, deregistering 471,200 shares.

2. Registration Statement No. 2-29080 filed May 17, 1968. Securities included: 1,571,251 shares of Common Stock; $3,750,000 principal amount of 5% Convertible Subordinated Debentures.

Amendment No. 1 filed August 9, 1968. Securities included: 2,738,168 shares of Common Stock; $7,800,000 principal amount of 6% Convertible Subordinated Debentures; 487,500 shares of Common Stock issuable upon conversion of said Debentures; an indeterminate amount of Common Stock upon operation of anti-dilution provisions thereof.

Amendment No. 2 filed August 20, 1968. Securities included: 2,738,168 shares of Common Stock; $4,000,000 principal amount of 5% Convertible Subordinated Debentures; an indeterminate amount of shares of Common Stock upon conversion of 5% Debentures and upon operation of anti-dilution provisions thereof; $3,800,000 principal amount of 6% Convertible Subordinated Debentures; 237,500 shares of Common Stock issuable upon conversion of 6% Debentures and an indeterminate amount of Common Stock upon operation of anti-dilution provisions thereof.

Amendment No. 3 filed August 27, 1968. This Registration Statement became effective on August 28, 1968. Securities included: 2,738,168 shares of Common Stock; $4,000,000 principal amount of 5% Convertible Subordinated Debentures; an indeterminate amount of shares of Common Stock upon conversion of 5% Debentures and operation of anti-dilution provisions thereof; $9,800,000 principal amount of 6% Convertible Subordinated Debentures; 612,500 shares of Common Stock issuable upon conversion of 6% Debentures and an indeterminate amount of shares of Common Stock upon operation of anti-dilution provisions thereof.

3. Registration Statement No. 2-29286, filed June 11, 1968. Securities included: $15,000,000 principal amount of % Convertible Subordinated Debentures; an indeterminate amount of shares of Common Stock reserved for issuance upon conversion of said Debentures.

Amendment No. 1 filed July 18, 1968. Securities included: $15,000,000 principal amount of % Convertible Subordinated Debentures plus an indeterminate amount of shares of Common Stock reserved for issuance upon conversion of said Debentures.

Amendment No. 2 filed July 25, 1968. This Registration Statement became effective on July 25, 1968. Securities included: $15,000,000 principal amount of 6% Convertible Subordinated Debentures plus an indeterminate amount of shares of Common Stock reserved for issuance upon conversion of said Debentures (937,500 shares of Common Stock were initially reserved for issuance upon conversion).

4. Registration Statement No. 2-30223 filed September 23, 1968. Securities included: 2,285,601 shares of $1.05 Convertible Preferred Stock; 2,660,601 Warrants; an indeterminate amount of shares of Common Stock issuable upon conversion of Preferred Stock; 2,660,601 shares of Common Stock issuable upon the exercise of Warrants.

Amendment No. 1 filed October 14, 1968. This Registration Statement became effective on October 16, 1968. Securities included: 2,285,601 shares of Common Stock; 2,285,601 Warrants; 375,000 Warrants; 375,000 shares of Common Stock issuable upon exercise of Warrants.

5. Registration Statement No. 2-30859 filed November 27, 1968. Securities included: 2,138,603 shares of Common Stock; 325,853 Warrants; $3,300,000 principal amount of 6% Convertible Subordinated Debentures; $3,600,000 principal amount of 5% Convertible Subordinated Debentures.

Amendment No. 1 filed April 29, 1969. Securities included: $1,463,600 principal amount of 7-1/2% Subordinated Debentures; $1,000,000 principal amount of 5% Convertible Subordinated Debentures; 1,100,000 shares of Series B Convertible Preferred Stock; 1,100,000 shares of Common Stock issuable upon conversion of Preferred Stock; 929,447 shares of Common Stock; 325,936 Warrants; 454,410 shares of Common Stock issuable upon exercise of Warrants.

Amendment No. 2 filed June 27, 1969. Securities included: $1,369,500 principal amount of 7-1/2% Subordinated Debentures; $1,000,000 principal amount of 5% Convertible Subordinated Debentures; 1,000,000 shares of Series B Convertible

Preferred Stock; 3,000,000 shares of Common Stock issuable upon conversion of Preferred Stock and 5% Subordinated Debentures; an indeterminate amount of shares of Common Stock upon operation of anti-dilution provisions of 5% Debentures; 996,069 shares of Common Stock; 313,178 Warrants; 726,348 shares of Common Stock issuable upon exercise of said Warrants and an indeterminate number of shares of Common Stock issuable upon operation of anti-dilution provisions of said Warrants.

It is not known whether this Registration Statement ever became effective.

6. Registration Statement No. 2-31606 filed February 3, 1969. Securities included: 11,980,000 shares of Common Stock; 2,995,000 shares of $1.60 Convertible Preferred Stock; 2,995,000 shares of Common Stock issuable upon conversion of Preferred Stock and an indeterminate number of shares issuable upon operation of anti-dilution provisions thereof; 2,995,000 Warrants; and 2,995,000 shares of Common Stock issuable upon exercise of Warrants and an indeterminate number of shares of Common Stock issuable upon operation of anti-dilution provisions thereof.

Amendment No. 1 filed March 28, 1969 reducing securities included to two shares of Common Stock.

This Registration Statement was withdrawn on application of G & B by letter dated April 29, 1969 and never became effective.

7. Registration Statement No. 2-32767 filed April 28, 1969. Securities included: 659,129 shares of Common Stock.

Amendment No. 1 filed July 9, 1969. Securities included: 657,619 shares of Common Stock.

It is not known whether this Registration Statement ever became effective.

Interrogatories 2, 3, 5, 12 and 13

2. What efforts were made by or on behalf of CUC to cause the registration statement dated November 27, 1968 covering, inter alia, 77,323 shares of its Common Stock issued pursuant to a contract with plaintiff dated August 20, 1968 (the Registration Statement) to become effective?

3. Give the date of each act referred to in your answer to Interrogatory 2.

5. Give the date and nature of each communication, written or otherwise, between (i) the Commission, or any representative thereof, and (ii) CUC, or any one acting on its behalf, concerning (a) the Registration Statement, (b) any amendment thereof, or (c) the subject matter of the Registration Statement or of any amendment thereof.

12. Why did CUC file with the Commission no amendment to the Registration Statement before April 29, 1969?

13. Why, having filed with the Commission a separate registration statement covering different securities on February 3, 1969, did CUC fail to file with the Commission an amendment of the Registration Statement on or about that date?

Answer:

The Registration Statement, as filed November 27, 1968, covered 2,138,608 shares of Common Stock, 325,853 Warrants, $3,300,000 principal amount of 6% Convertible Subordinated Debentures, and $3,600,000 principal amount of 5% Convertible Subordinated Debentures. These securities have been or were proposed to be issued in connection with the acquisition by Iota of various companies or properties, or in consideration of settlement agreements or other transactions described in the Registration Statement. Of these securities only 69,591 Common Shares were in the name of plaintiff's decedent.

In November, 1968, G & B began work on the Registration Statement at Iota's California office to review and revise drafts thereof prepared by Loeb and his staff, and their work thereon continued until the filing thereof with the Commission on November 27, 1968 by letter of G & B dated November 26, 1968. At the time of this filing G & B advised the Commission confirm an understanding reached on November 14, 1968 between Loeb of Iota, Reford Burney of the SEC and Seymour Kleinman of G & B that an amendment thereto would be filed, as soon as consolidated financial statements were available, reflecting Iota's acquisition in October and November 1968 of control of The Seeburg Corporation and Berry Petroleum Company. G & B worked on the preparation of this amendment.

Pending the availability of the foregoing financial statements, Iota began preparations for an exchange offer for shares of Warner Bros.-Seven Arts Limited, and G & B or Loeb prepared a registration statement (No. 2-31606) covering the Iota securities proposed to be issued in said exchange offer, which registration statement was filed with the Commission on February 3, 1969. At the time of such filing it was concluded that an amendment to such registration statement would have to be filed when year-end consolidated financial statements were available and further concluded that the proposed amendment to the (November) Registration Statement could not be filed and become effective until up-dated material information with respect to the audited financial results of year-end as well as the outcome of said exchange offer was available.

On February 18, 1969, on behalf of a rival for control of Warner Bros., the accounting firm of Touche, Ross, Bailey &

Smart (now, Touche Ross & Company) sent to the American Stock Exchange and other regulatory authorities a report questioning and commenting upon the financial statements contained in the February 3, 1969 registration statement, whereupon Iota engaged its accountants, Arthur Young & Company, to review its accounting in light of such report. Until Arthur Young's response was received on March 24, 1969, G & B determined that no further filings could prudently be made.

On March 28, 1969, the February 3, 1969 registration statement relating to said exchange offer was effectively withdrawn by amendment to reflect the decision of Iota's then management not to make the tender offer. G & B then worked on the proposed amendment to the (November) Registration Statement, which was filed April 29, 1969 and contained year-end financial statements certified by Arthur Young & Company under date of April 10, 1969 and described other intervening material transactions, including Iota's agreement to acquire the Rexall Drug operations described therein. A second amendment to the (November) Registration Statement was filed on June 27, 1969 to reflect material changes in the terms of said acquisition, and Iota requested that the Commission accelerate the effective date of the Registration Statement to June 30, 1969. Said request for acceleration was superseded by an oral request of G & B to delay effectiveness in light of a pending investigation of Iota by the American Stock Exchange. The American Stock Exchange suspended the listing of Iota's Common Stock on July 22, 1969 and the Commission ordered a suspension of all trading of such stock on August 1, 1969, at which point no further efforts to cause the Registration Statement to become effective were made.

The work on the Registration Statement and the two amendments thereto included the drafting thereof, the procuring,

compiling and analyzing of information obtained from divisions and subsidiaries of Iota, their officers, employees and accountants and from persons identified in the Registration Statement or the amendments thereto as holders of securities being offered, or their attorneys or agents and oral and written communication with the Commission and legal research and analysis. Until the request for acceleration was delayed, as aforesaid, Loeb, certain other Iota officers and G & B were in communication with the Commission in connection with the continuing effort to cause the Registration Statement to become effective. Attorneys at G & B recall and the correspondence found in their files reflects the following communications to the Commission:

11/14/68, telephone conversation among Reford Burney of the SEC, Seymour Kleinman of G & B, and Loeb as to Iota's intention to amend the Registration Statement;

11/26/68, letter, G & B to SEC, filing the Registration Statement;

12/19/68, letter, Benjamin Breslauer (Iota's Controller) to SEC, stating intention to amend the Registration Statement;

After 2/3/69, telephone conversation between Loeb and Burney as to Burney's suggested addition of materials contained in a "Summary of Certain Information" in Amendment No. 1 to the Registration Statement;

3/24/69, letter, Arthur Young & Company to American Stock Exchange, with copy to SEC, commenting on report dated February 18, 1969, by Touche, Ross, Bailey & Smart, insofar as it pertained to the consolidated financial statements of Iota for the year ended December 31, 1968, which statements were subsequently included in Amendment No. 1 to the Registration Statement with audit report of Arthur Young & Company dated April 10, 1969;

4/25/69, letter, Kleinman to SEC, filing Amendment No. 1 to the Registration Statement;

4/26/69, letter, Loeb to SEC, requesting that the Registration Statement be declared effective on 6/30/69;

6/26/69, letter, Loeb to SEC, filing Amendment No. 2 to the Registration Statement;

6/26/69, letter, G & B to SEC, stating various opinions in connection with the Registration Statement;

7/ ?/69, conversation among Kleinman of G & B, Leonard Rossen and Reford Burney of the SEC as to request to delay effective date of Registration Statement;

8/1/69, letter, Kleinman to SEC, forwarding additional copies of Amendment No. 2.

Photoprints of copies of the above letters taken from the files of Golenbock and Barell are annexed hereto as Exhibit A.

Interrogatory No. 4

With respect to each person who directed or participated in any act referred to in your answer to Interrogatory 3, give his or her name, present residence address, present business address, and his or her relationship with CUC both at the time of such act and at present.

Answer:

See attached Exhibit B.

Interrogatory No. 6

Where, and in whose custody, are the records of any of the communications referred to in your answers to Interrogatory 5?

Answer:

The records of the communications referred to in the Answer to Interrogatory No. 5 are in the custody of Golenbock and Barell at 60 East 42nd Street, New York, New York.

Interrogatory No. 7

Why was no disclosure made in Amendment No. 1, dated April 29, 1969, to the Registration Statement of:

(a) the market price of common stock of Perfect Film & Chemical Corporation as of March 18, 1969;

(b) the fact that the per share price CUC agreed on March 18, 1969 to pay for 86,000 shares of such stock was approximately 192% of the market price for such stock as of that date; or

(c) CUC's reasons for making such acquisition at that price?

Answer:

Amendment No. 1 described (p. 45), to the extent then deemed material, the then status of an investment under an agreement dated March 18, 1969, in shares of Perfect Film & Chemical Corporation ("Perfect"), the shares of which were then traded on the New York Stock Exchange, and of a proposal made by Iota on March 28, 1969 for combination of Iota, Perfect and one of Perfect's subsidiaries. Perfect did not accept such proposal. Golenbock and Barell acted as counsel for Iota in connection with said agreement of March 18, 1969 and said proposal of March 28, 1969, and prepared and passed on the legal sufficiency of the portion of Amendment No. 1 referring thereto.

Interrogatory No. 8

Give the date of distribution of each proxy statement sent to CUC stockholders by CUC management in 1968 and 1969 and the date of each stockholder's meeting for which proxies were solicited.

Answer:

1. Proxy Statement dated May 17, 1968 for Annual Meeting to be held July 19, 1968.

2. Proxy Statement dated October 16, 1968 for Special Meeting to be held November 15, 1968.

3. Proxy Statement dated June 24, 1969 for Meeting to be held August 4, 1969. (Meeting not held)

4. Proxy Statement dated December 8, 1969 for Meeting to be held December 29, 1969. (Meeting not held)

Interrogatory No. 9

Why did CUC fail to make disclosure either in Amendment No. 1 to the Registration Statement or in Amendment No. 2 thereto of its inability to obtain financing in support of its capital investment programs at least to the extent reported at page 12 of CUC Proxy Statement dated December 8, 1969, to wit: "Commencing early in 1969, the Company's projected capital investment programs were restricted by its inability to obtain bank or institutional financing in support thereof." and "During the first half of 1969, the Company had sought, but was unable to establish, banking relationships to provide the short-term working capital needs of the Company and its subsidiaries."

Answer:

The two sentences quoted appear at page 12 of Iota's proxy statement dated December 8, 1969 and introduce a two-page discussion of "a variety of factors which may have contributed to this development," a presentation which reflects an analysis made with the benefit of hindsight. At the time that Amendment No. 1 and/or Amendment No. 2 to the Registration Statement were filed the cumulative effect of the problems outlined in the quoted sentences had not yet become manifest.

Factors discussed in the cited portion of the proxy statement, which were deemed material when Amendment No. 1 and/or Amendment No. 2 were filed appear therein as follows:

(a) Failure to consummate proposed acquisition of interest in Warner Bros.-Seven Arts Limited (Am. #1, p. 15; Am. #2, p. 7).

(b) Failure to effect proposed combination with Perfect Film & Chemical Corporation (Am. #2, p. 54).

(c) Negotiations with banks in attempt to finance Rexall Drug operations (Am. #2, p. 50).

(d) Financing through acquisition of interest in film "Darling Lili" on June 20, 1969 (Am. #2, p. 25).

(e) "Anti-conglomerate" atmosphere in the economy (Am. #1, p. 15; Am. #2, p. 7).

(f) Capital investment program in entertainment field, the financing thereof, and the lack of assurance of ability to obtain financing or complete the program (Am. #1, pp. 22-5; Am. #2, pp. 23-6).

(g) Use of portion of proceeds of Euro-bond offering to repay bank notes (Auditor's footnote in Am. #1, p. 87; Am. #2, p. 97).

Interrogatory No. 10

Why in Amendment No. 1 to the Registration Statement was no disclosure made of the fact disclosed in CUC's Proxy Statement dated December 8, 1969 that pursuant to the "Fuller Agreement" of January 30, 1979, CUC not only paid $3,000,000 for purchase of all outstanding shares of the 5-1/2% cumulative preferred stock of George A. Fuller Company, Inc. but also was substituted as guarantor of secured loans made by The Chase Manhattan Bank to Fuller aggregating approximately $9,700,000?

Answer:

When Iota acquired the Fuller stock, the principal amount of the loan of Chase Manhattan Bank to Fuller was approximately $6,800,000. As reported in Iota's proxy statement dated December 8, 1969, said loans were secured by approximately 200,000 shares of OKC Corporation common stock which had on January 30, 1969 a market value of some $7,000,000, and by Fuller's interest in a certain building, and from said date

to the date of the proxy statement, Iota had not incurred any actual liability as guarantor. Accordingly, specific reference to the substitution of Iota as guarantor and the extent, if any, to which Iota could be liable on said guarantee was not deemed material in light of Iota's overall operations.

Amendment No. 2 (p. 36) reported in a section captioned "Investment in Construction Company" that Iota had "extended technical and financial assistance to Fuller in the form of guarantees of certain of Fuller's secured bank loans and has agreed to lend to Fuller $2,500,000, of which approximately $1,950,000 has been advanced to date". A substantial portion of the $1,950,000 in advances was made after the filing of Amendment No. 1 and the comparable section therein (pp. 34-5) did not contain a report on guarantees and advances.

Interrogatory No. 11

Why did CUC fail to disclose in Amendments Nos. 1 and 2 to the Registration Statement the nature and full extent of its relationship with Kleiner, Bell & Co., Incorporated (Kleiner, Bell), at least to the extent reported in its Proxy Statement dated December 8, 1969, including the fact that in 1968 and 1969 CUC had paid or agreed to pay, Kleiner, Bell underwriting discounts, commissions, brokerage and fees exceeding approximately $1,650,000?

Answer:

This interrogatory apparently relates to cumulative data found in the section captioned "Relationship with Kleiner, Bell" in the Iota proxy statement of December 8, 1969. Such data is not required to be included in a Form S-1 and appears in the proxy statement specifically in response to comments of the SEC with respect to that document. Moreover, the fee payments and arrangements there described, which were related to Iota's public offering of securities or required to be publicly disclosed in

connection therewith, had been disclosed in the relevant SEC filings at the time.

Specifically, Iota's proxy statement dated December 8, 1969 reported (p. 68) that Kleiner, Bell & Co. Inc. ("Kleiner Bell") had received $212,000 as its share of underwriters' discounts and commissions in connection with a public offering of $15,000,000 of 6% Convertible Debentures in July, 1968. The cover page of the prospectus under the Registration Statement No. 2-29286 covering said debentures identified Kleiner Bell as one of the underwriters and stated the rate of underwriting discounts and commissions on the offering, and the underwriting section (p. 34) identifies aggregate amount of debentures purchased by Kleiner Bell.

The proxy statement of December 8, 1969 further reported (p. 68) that for services in finding, negotiating and assisting in the Seeburg acquisition, Iota paid Kleiner Bell a fee of $400,000, agreed to issue warrants for purchase of 100,000 shares of Iota common stock at $17.25 per share, and entered a four-year consultant agreement at $150,000 per year. These arrangements were fully described at page 10 of the prospectus under the Registration Statement No. 2-30223, covering the securities issued in the Seeburg acquisition.

The proxy statement of December 8, 1969 further reported (p. 68) that in connection with the Seeburg exchange offer, made by Allen & Co. Incorporated and Kleiner Bell as dealer-managers, Kleiner Bell received co-dealer-manager fees and soliciting dealer fees of approximately $365,000. The cover page of the prospectus for the Seeburg exchange offer as included in the aforesaid Registration Statement No. 2-30223 identified Kleiner Bell as one of the dealer-managers and stated Iota had

agreed to pay a management fee, not less than $250,000, at the rate of $.95 per share tendered, of which $.65 per share would go to the soliciting dealer, there being 2,285,601 shares of Seeburg of which tender was sought.

The proxy statement of December 8, 1969 further reported (p. 69) that in connection with Iota's acquisition of race track operations in May 1969, Iota agreed to pay Kleiner Bell $150,000. This fact appears at page 28 of Amendment No. 2.

The proxy statement of December 8, 1969 further reported (p. 69) that for services in connection with Iota's purchase of an interest in the film "Darling Lili" (which occurred in June, 1969), Iota agreed to pay Kleiner Bell $500,000. This fact appears at page 25 of Amendment No. 2.

Dated: New York, New York
September 6, 1974

IOTA INDUSTRIES, INC.

EXHIBIT A

A131

GOLENBOCK AND BARELL

60 EAST 42ND STREET

NEW YORK, N.Y. 10017

YU 6-3300
AREA CODE 212
CABLE ADDRESS "GOLEGAL"

MARTIN C. BARELL
JUSTIN M. GOLENBOCK
SEYMOUR KLEINMAN
DONALD D. SHACK
HENRY C. SHAYS
MARVIN B. TEPPER
ARNOLD RAYNOR
LEONARD W. WAGMAN
NORMAN J. MENELL

ERNEST WALTON
CHARLES [illegible]
JEROME J. [illegible]
ARTHUR M. HANDLER
DAVID W. SASS
ROBERT M. BIRNBAUM
STEVEN R. FRANKEL
LOUIS B. YORK
ARTHUR S. SILVERMAN
CHARLES B. SALFELD
STEPHEN E. GOTTLIEB
JEFFREY A. SIEGEL
IRVING HYMSON

November 26, 1968

Securities & Exchange Commission
Washington, D.C. 20549

Re: Commonwealth United Corporation

Gentlemen:

On behalf of the above captioned corporation, we herewith file with you one executed and two conformed copies of a Registration Statement on Form S-1. In addition, we transmit to you the following:

1) Five copies of the cross reference sheet.

2) Five additional copies of the Registration Statement.

3) Five copies of the Preliminary Prospectus.

4) Five copies of the exhibits.

5) Certified check to cover the filing fee.

Reference is made to a telephone conversation on November 14, 1968 between Mr. Reford Burney of the Securities and Exchange Commission, the undersigned, and Rodney W. Loeb of Commonwealth United Corporation. In accordance with the understanding reached, it is the Registrant's intention to amend within the next few weeks and prior to its effective date after present plans with respect to a combination of The Seeburg Corporation and the Registrant have been effected. At that time, we will be in a position to re-shape much of the narrative and financials (now included separately with respect to each of those corporations), to reflect the combination. In similar context, reference is made to an under-

BEST COPY AVAILABLE

standing reached in a telephone conversation on November 14, 1968, between Mr. Richard Giebel of the Securities and Exchange Commission and Mr. Benjamin Breslauer, Controller of Commonwealth United Corporation. Based upon that discussion, this Registration Statement is being filed with separate financial statements for Commonwealth United Corporation and Berry Petroleum Company. The two companies were merged on October 31, 1968, on a "pooling of interest" basis. It is the Registrant's intention to amend this filing prior to its effective date, and this amendment will include the combined financial statements of Commonwealth United Corporation and Berry Petroleum Company.

If you have any questions with respect to the enclosed, please contact the undersigned collect by telephone.

Please acknowledge receipt of the enclosed on a copy of this letter and return to the undersigned.

Very truly yours,

SEYMOUR KLEINMAN

SK:dw
Encs.

cc: Rodney W. Loeb, Esq.

[CONFORMED COPY]

[CUC 11/68 Reg. Statement] [4433/135] A133

December 19, 1968

Mr. Richard A. Giebel, Branch Chief
Securities and Exchange Commission
Washington, D. C. 20549

Dear Mr. Giebel:

I want to thank you again for the time you have spent considering our problems relative to the financial statements in Registration #2-30859.

It is our intention to amend this registration statement in January 1969. The amendment will include consolidated financial statements for Commonwealth United Corporation at September 30, 1968, and will include a statement of operations for the nine months ended on that date. These consolidated statements will include the financial statements of The Seeburg Corporation as of July 31, 1968 and the nine months then ended.

It is my understanding that the filing should include unaudited Part II schedules for Commonwealth United Corporation as of the same date as the financial statements. The Part II schedules for the preceding three years may be incorporated by references to the separate schedules of the companies previously filed.

If this does not agree with your understanding, please call me collect at your earliest convenience.

Have a happy holiday season.

Yours truly,

BENJAMIN F. BRESLAUER
Controller

bc: I. Goldstein
R. Sarazen
R. Loeb
T. Orr

ARTHUR YOUNG & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS

615 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90017

A134

March 24, 1969

Mr. E. Stanley Peck, Jr.
Assistant Vice President -
Securities Division
American Stock Exchange
68 Trinity Place
New York, New York 10006

Dear Mr. Peck:

Re: Commonwealth United Corporation

In accordance with the request of Mr. Irving Goldstein, Senior Vice President of Commonwealth United Corporation (Commonwealth) we have reviewed the report dated February 18, 1969 of Touche, Ross, Bailey & Smart which contains certain questions and comments on the consolidated financial statements of Commonwealth appearing in a registration statement (Form S-1) dated February 3, 1969. The questions and comments contained in the February 18, 1969 report have been considered by us in performing our examination for 1968.

We have not made an examination of Commonwealth's financial statements at September 30, 1968 or for the nine months then ended or for any period prior to that date. However, we are presently performing an examination of the consolidated financial statements of Commonwealth for the year ended December 31, 1968 and expect to report thereon by April 10, 1969.

Nothing has come to our attention during the course of our examination which indicates that any significant adjustments to Commonwealth's unaudited consolidated financial statements are required at September 30, 1968, with the exception of certain reclassifications and additional disclosure requirements not material in nature.

Specific comments to questions contained in the Touche, Ross, Bailey & Smart report are shown below. Certain questions have not been

commented on by us since Commonwealth has withdrawn its offer to acquire Warner Bros. - Seven Arts Limited.

Sunset acquisition/net operating loss carryforward

Commonwealth did not use the publicly traded market value of its stock as the basis for valuing the stock issued to Sunasco Incorporated for the following reasons:

1. Less than 1,000,000 shares of Commonwealth were available for public trading, and Commonwealth issued the equivalent of 1,950,000 shares to Sunasco,

2. significant restrictions were placed on the shares issued to Sunasco, and

3. subsequent sales of Commonwealth stock took place at $6.75 per share.

We believe that Commonwealth has followed generally accepted accounting principles in recording the acquisition of Sunset International Petroleum Corporation (Sunset). The amount attributable to the acquisition of Sunset represents all stock issued to acquire Sunset, including stocks issued to Sunasco Incorporated.

The provision for federal income taxes of Commonwealth for the nine months ended September 30, 1968 is low in relation to income before taxes, principally due to the tax benefits arising from the oil and gas operations of Sunset from the date of its acquisition and of Berry Petroleum Company. None of the tax loss carryforward of Sunset was utilized in the computation of the provision for federal income taxes.

CUC consolidated statement of income

As explained above, none of the tax loss carryforward attributable to Sunset at the date of acquisition was utilized in the computation of the provision for federal income taxes for the nine months ended September 30, 1968.

Commonwealth's average shares outstanding changed in January 1969 as a result of Commonwealth purchasing additional shares of The

Seeburg Corporation from Messrs. Coleman and Nicastro in January 1969, thereby increasing the portion applicable to the minority interest, and decreasing the number of shares attributable to the pooled portion.

Income from real estate transactions

Real estate is a part of Commonwealth's business activity. Accordingly, income from the sale of real estate is recurring and is properly classified.

Apartment houses

In the transactions referred to, no imputed interest was provided on the second mortgages because the interest rates are similar to the rates on the underlying first mortgages.

It is Commonwealth's policy to provide for losses on receivables when they are anticipated and to maintain an adequate reserve for such losses.

The $917,500 prepaid interest was deducted from the face amount of the notes receivable.

Crawford and Hawaiian properties

Although the assets of Crawford Oil Corporation and Hawaiian Ocean View Estates consist principally of cash and notes receivable, an inventory of real estate, carried at cost, is present which indicates a continuity of operations. In addition, Commonwealth's management has expressed its intention to continue their operations.

The acquisition of the unimproved land was negotiated on an arms-length basis in an independent transaction.

The gross profit on the sale will not be $3,700,000 since Commonwealth agreed to pay for certain improvements to the land sold. Engineering estimates are presently being prepared as to those costs. The sale was made to Messrs. Kleiner and Bell and certain other individuals, none of whom are officers or directors of Commonwealth or had any interest in the Crawford and Hawaiian properties.

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Real estate development companies

Commonwealth does not have a majority interest in any of the companies referred to, does not participate in the operations or management thereof does it control the Board of Directors of those companies.

The $4,000,000 is considered to be collectible and the underlying equity in the real estate companies is deemed by Commonwealth to be fairly stated.

The inclusion of condensed financial statements of the newly formed corporations will be considered at December 31, 1968.

Entertainment operations

Entertainment revenues increased substantially in 1968 because of the increased activity in this area. Selling and general and administrative costs applicable to this increase have been included as selling and general and administrative costs. The amortization of film costs appears to be low because certain amounts of amortization were netted against cost rather than shown separately. Commonwealth will report the gross amounts at December 31, 1968.

Oil and gas operations

Sunset formed Sunset International Management Company (Management Company) in 1968 in order to conduct an investor drilling program wherein Sunset performs the drilling for the benefit of the investors obtained by Management Company. After the investors recoup their investment, Sunset receives a 33-1/3% interest in the respective oil and gas reserves. Accordingly, Sunset discontinued most of its drilling operations on its own behalf in 1968 and did not add any significant new reserves.

Commonwealth follows the accounting method of recording income from oil and gas sales as the oil and gas is produced. There were no carved-out oil payments during the nine months ended September 30, 1968.

Accumulated depreciation, depletion and amortization of oil and gas properties appears to be low because a portion of the accumulated amounts were netted against the cost of oil and gas properties. Commonwealth will show the amounts separately at December 31, 1968.

Interest and other income

Interest income is attributable to interest-bearing receivables and is recognized as income when earned. Interest received on a cash basis is not included in income until earned.

Income from an unconsolidated foreign subsidiary is also included in the caption "Other income".

Transactions involving Sunset

The $3,500,000 debentures were sold to Irving Trust Company for cash and the $1,000,000 discount was recorded as deferred debt expense and is being amortized.

The value of the securities issued by Commonwealth in connection with the Sunset acquisition was previously discussed.

Disposition of Sunasco common stock

The Sunasco stock was sold on the open market on the New York Stock Exchange. No gain or loss was recognized on the sale of the stock

Transactions with insiders

This transaction was disclosed in the proxy sent to Commonwealth shareholders at the time of the acquisition of Sunset. The accounting treatment for the sale of debentures to a group of officers and directors follows:

Cash	$525,000	
Deferred debt expense	210,000	
5% convertible debentures		$735,000

The discount involved was not considered compensation to the recipients because these individuals were not officers or directors nor employees of Commonwealth at the time the transaction was negotiated. In addition, we have been advised that the amount received from the sale approximated the fair market value of the debentures. Also, the debentures were not immediately convertible nor were the debentures registered.

We have been informed that the principal purpose of this transaction was to obtain cash.

Miscellaneous

Berry Petroleum litigation

The Berry litigation is not material to the consolidated financial statements of Commonwealth.

Divestiture of Cavalier

Cavalier's revenues and net income for the nine months ended September 30, 1968 are disclosed in Note 7 to the Commonwealth financial statements.

1% to 7% interest

Note 5 to Commonwealth's financial statements will be expanded to disclose the imputed interest applicable to the 1% interest rate at December 31, 1968.

Guarantees and defaults

Management of Commonwealth does not believe that any losses will arise under Commonwealth's guarantees or defaults.

Yours very truly,

Arthur Young & Company

cc: Mr. Reford B. Burney
Branch Chief
Division of Corporation Finance
Securities and Exchange Commission

— "Clean Up"

Q

82-3/133

A140 84,F7

GOLENBOCK AND BARELL

60 EAST 42ND STREET

NEW YORK, N.Y. 10017

YU 6-3300
AREA CODE 212
CABLE ADDRESS "GOLEGAL"

MARTIN C. BARELL
JUSTIN M. GOLENBOCK
SEYMOUR KLEINMAN
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ARTHUR C. SILVERMAN
CHARLES B. SALFELD
STEPHEN E. GOTTLIEB
JEFFREY N. SIEGEL
RONALD SILVER
STEVEN M. GOLDMAN

April 25th, 1969

Securities & Exchange Commission
Washington, D.C. 20549

Att: Division of Corporation Finance

Re: Commonwealth United Corporation;
Amendment No. 1 to Registration
Statement on Form S-1
File No. 2-30859

Gentlemen:

On behalf of the captioned Registrant we are delivering herewith for filing under the Securities Act of 1933, as amended:

1. One (1) manually executed copy of Amendment No. 1 to the Registration Statement, including exhibits as therein specified.

2. Three (3) additional conformed copies of the Registration Statement with exhibits, pursuant to Rule 472(a).

3. Six (6) additional copies of the amended Prospectus in the form contained in the Registration Statement, each accompanied by a cross-reference sheet, pursuant to Rule 472(b).

4. Certified check in the aggregate amount of $8,495.97 to the order of the Securities and Exchange Commission in payment of the registration fee.

In explanation of the filing fee, please note that the securities to be registered under the enclosed Amendment include securities for which a registration fee in the amount of $1,974.00 was previously paid on or about November 27, 1968 with the filing of the Registration Statement, File No. 2-30859 amended by the enclosed. Accordingly, from the total filing fee of $10,635 payable in respect of the securities to be registered under the enclosure, as indicated on the cover page to Form S-1, a credit for the fee previously paid was taken and the enclosed represents the difference.

Please note that the enclosure contains, under the caption "Summary of Certain Information", the material suggested by Mr. Reford Burney of the Commission's staff, in a telephone conference with Rodney W. Loeb, Esq., Vice President of the Registrant, subsequent to the filing, on or about February 3, 1969, of a Registration Statement on Form S-1, File No. 2-31606, which was subsequently withdrawn.

In light of the fact that no letter of comment with respect to the instant Registration Statement filed on November 27, 1968 was received, there is not included in this filing two copies of the Amendment marked to indicate the changes effected by the Amendment, under Rule 472(d). In further explanation, please note that in addition to the new material suggested by Mr. Burney, audited financials for the year ended December 31, 1968 are included in the Amendment and that the description of the Registrant's business, as well as other matters, more closely follows the format of the Registration Statement (File No. 2-31606) filed on February 3, 1969 and subsequently withdrawn, than the format of the Registration Statement originally filed and amended hereby on November 27, 1968.

In light of those revisions we thought it would be inappropriate to red line copies of the enclosed Amendment and request your indulgence in this regard.

For the convenience of the staff, two (2) additional conformed copies of the Registration Statement with exhibits are being separately delivered to Mr. Reford Burney.

If there are any questions with respect to the foregoing, please call the undersigned, collect, at (212)-YU. 6-3300 or Rodney W. Loeb at (213) 657-5400.

Very truly yours,

SEYMOUR KLEINMAN

SK:dw
Enc.

P.S.:

In addition, copies of this filing are being filed in the New York and Chicago Regional offices of the Commission.

COMMONWEALTH UNITED CORPORATION
8920 WILSHIRE BOULEVARD · BEVERLY HILLS, CALIFORNIA 90211 · (213) 657-5400

A143

RODNEY W. LOEB
VICE PRESIDENT-LEGAL

April 26, 1969

Securities Exchange Commission
500 North Capital Street
Washington, D. C. 20549

RE: COMMONWEALTH UNITED CORPORATION
REGISTRATION STATEMENT ON FORM S-1
(FILE NO. 2-30859)

Attention: Mr. Reford Burney
Branch Chief
Division of Corporation Finance

Gentlemen:

In accordance with the requirements of Rule 461 of the General Rules and Regulations promulgated under the Securities Act of 1933, as amended, request is herewith made that the Registration Statement of Commonwealth United Corporation, File No. 2-30859, (filed on or about November 27, 1968), together with Amendments No. 1 (filed on or about April 29, 1969), and No. 2 (filed on or about June 27, 1969) thereto be declared effective by the Commission on Monday, June 30, 1969.

Thank you very much for your attention to this matter.

Very truly yours,

COMMONWEALTH UNITED CORPORATION

By

Rodney W. Loeb
Vice President - Legal

RWL:bd
Encl.

COMMONWEALTH UNITED CORPORATION
8920 WILSHIRE BOULEVARD · BEVERLY HILLS, CALIFORNIA 90211 · (213) 657-5400

RODNEY W. LOEB
VICE PRESIDENT-LEGAL

June 26, 1969

Securities and Exchange Commission
500 North Capital Street
Washington, D. C. 20549

RE: COMMONWEALTH UNITED CORPORATION
REGISTRATION STATEMENT ON FORM S-1
(FILE NO. 2-30859)

Attention: Mr. Reford Burney
Branch Chief
Division of Corporation Finance

Gentlemen:

Enclosed with this letter please find Amendment No. 2 to the above-captioned Registration Statement. The original filing of this Registration Statement was on or about November 27, 1968, and Amendment No. 1 thereto was filed with the Commission on or about April 29, 1969. This filing includes the following:

(a) One executed copy of Registration Statement on Form S-1

(b) Five conformed copies of Registration Statement on Form S-1

(c) Two red-lined copies showing changes from last filing (Amendment No. 1, filed on or about April 29, 1969)

(d) Five additional Registration Statements containing Prospectuses; and

(e) Three Volumes containing Exhibits.

This Registration Statement relates to the sale of various Commonwealth securities (Commonwealth's Common Stock, Series B Preferred Stock, Common Stock Purchase Warrants, 5% Convertible Debentures, 6% Convertible Debentures, and 7½% Debentures) by the holders thereof, and does not refer to or cover any Commonwealth securities which are being registered by Commonwealth for sale on behalf of Commonwealth.

Commonwealth has indicated orally to the staff of the Division that this Registration Statement filing includes the same narrative description of Commonwealth's business and the identical financial statements which have recently been submitted to the Division in connection with Commonwealth's Proxy Statement for the Annual Meeting of Stockholders scheduled to be held August 4, 1969. In this regard we have been informed by Arthur Young & Co., Commonwealth's independent certified accountants, that no number or any language in any note has been changed from the material in the Proxy Statement. (The only changes in the narrative description of Commonwealth were changes required in order to eliminate the words "Proxy Statement" and insert in lieu "Prospectus", or a similar change in a sentence to indicate that this material is being used as a part of a Prospectus.) Commonwealth has taken great pains and care to insure that all of the information set forth under the heading "The Offerings" and in Part II of this Registration Statement is fully accurate and consistent with all prior filings.

In accordance with the provisions of Rule 429 of the General Rules and Regulations of the Securities Act of 1933, as amended, the unsold portion of Commonwealth securities in the Registration Statement which became effective on or about August 28, 1968 (File No. 2-29080) have been included as a part of this Amendment No. 2 to Registration Statement No. 2-30859.

We are enclosing with this Amendment No. 2 a certified check in the amount of $556.34 to cover the additional filing fee required to be paid with respect to the additional securities being registered with this Amendment No. 2. This filing fee has been calculated in accordance with Rule 457 of the General Rules and Regulations under the Securities Act of 1933, as amended, and takes credit for fees previously paid in prior filings of this Registration Statement.

Commonwealth distributed to all the Selling Securityholders listed in this filing copies of Amendment No. 1 to this Registration Statement (the April 29, 1969 filing) requesting that such Selling Securityholders respond by letter. A copy of our letter to said Selling Securityholders is attached for your information, together with the sampling of the replies received. As indicated in the Prospectus, the securities covered thereby are being registered pursuant to contractual commitments entered into by Commonwealth contemporaneously with the agreements relating to the issuance thereof to the said Securityholders.

I am enclosing with this letter a Request for Acceleration. As you are aware, Commonwealth is desirous of having this Registration Statement declared effective by the Commission no later than June 30, 1969. Your expeditious processing thereof would be greatly appreciated.

If you have any questions with respect to this filing, please do not hesitate to contact the undersigned.

R. W. Loeb, c/o Commonwealth United Corporation, Telephone: 213/657-5400; or Seymour Kleinman, c/o Golenbock and Barell, Telephone: 212/986-3300.

Very truly yours,

Rodney W. Loeb
Vice President - Legal

RWL:bd

Encl.

A147

GOLENBOCK AND BARELL

60 EAST 42ND STREET

NEW YORK, N.Y. 10017

YU 6-3300
AREA CODE 212
CABLE ADDRESS "GOLEGAL"

MARTIN C. BARELL
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ARTHUR C. SILVERMAN
CHARLES B. SALFELD
STEPHEN E. GOTTLIEB
JEFFREY N. SIEGEL
RONALD SILVER
STEVEN M. GOLDMAN

June 26, 1969

Securities and Exchange Commission
Washington, D.C. 20549

RE: COMMONWEALTH UNITED CORPORATION
REGISTRATION STATEMENT ON FORM S-1
(FILE NO. 2-30859)

Gentlemen:

Reference is made to the Registration Statement (the "Registration Statement") on Form S-1 (File No. 2-30859), as amended, filed with the Securities and Exchange Commission by Commonwealth United Corporation (the "Company).

We hereby advise that we have examined originals or copies, certified to our satisfaction, of the Certificate of Incorporation and By-Laws of the Company, minutes of the Board of Directors, Executive Committee and stockholders of the Company and such other documents and instruments and certificates of officers and representatives of the Company, and we have made such examinations of law, as we have deemed appropriate for the opinions herein expressed.

Based upon the foregoing, we are of the opinion that:

(1) The Company has been duly incorporated and is a validly existing corporation in good standing under the laws of the State of Delaware, except that the Company has not paid its franchise tax for 1968, which was assessed on May 15, 1969, but which may be paid without penalty on or before July 1, 1969;

(2) The 7½% Subordinated Debentures (due May 1, 1981) of the Company, described in and being offered by the

Registration Statement, were duly authorized, issued and paid for in accordance with the terms set forth in the Registration Statement, and the Indenture relating thereto, and are valid, binding and legally enforceable obligations of the Company;

(3) The 5% Convertible Subordinated Debentures (due December 31, 1988) of the Company, described in and being offered by the Registration Statement, were duly authorized, issued and paid for in accordance with the terms set forth in the Registration Statement, and the Indenture relating thereto, and are valid, binding and legally enforceable obligations of the Company. The shares of Common Stock issuable upon conversion thereof will, when issued pursuant to the terms thereof and the Indenture relating thereto, as described in the Registration Statement, be duly and validly issued and fully paid and non-assessable;

(4) The Series B Convertible Preferred Stock of the Company, described in the Registration Statement, and which may, after issuance, be offered thereby, has been duly authorized by the Board of Directors of the Company and, subject to stockholder approval, when issued as described in the Registration Statement, will be duly and validly issued and fully paid and non-assessable. The shares of Common Stock issuable upon conversion of the Series B. Convertible Preferred Stock, when issued pursuant to the exercise of the conversion rights thereof, as set forth in the Registration Statement, will be duly and validly issued and fully paid and non-assessable;

(5) The shares of Common Stock of the Company, described in and being offered by the Registration Statement, are or will, when issued as described therein, be duly and validly issued and fully paid and non-assessable;

(6) The Common Stock Purchase Warrants of the Company, described in and being offered by the Registration Statement are, or will when issued as described therein, be duly and validly issued and fully paid and non-assessable. The shares of Common Stock of the Company issuable upon the exercise of said Warrants will, when issued pursuant to the terms thereof as set forth in the Registration Statement, be duly and validly issued and fully paid and non-assessable.

(7) Although the preference of all outstanding shares of the Company's Preferred Stock, upon involuntary liquidation of the Company (including those shares issued and to be issued as described in the Registration Statement), exceeds the $1.00 par value of such shares, there appears to be no provision in the applicable sections of the General Corporation Law of Delaware which restricts the Company's surplus by reason of such excess and, accordingly, that no remedies are available to security holders before or after the payment of any dividend that would reduce the surplus to an amount less than the amount of such excess. The foregoing opinion is based upon the resolutions of the Board of Directors fixing the rights, privileges and preferences of the Company's Preferred Stock in accordance with Section 151 of the General Corporation Law of Delaware and Section 154 of the General Corporation Law of Delaware relative to the determination of capital and surplus.

The foregoing assumes compliance with any applicable State and local laws affecting all Company securities described in the Registration Statement, whether issued or to be issued, and expresses no opinion thereon.

We hereby consent to the filing of this opinion as an Exhibit to the Registration Statement.

Very truly yours,

SK:bd

GOLENBOCK AND BARELL

August 1st, 1969

A150

Mr. Robert Strahota
Securities & Exchange Commission
Washington, D.C. 20549

Re: Commonwealth United Corporation

Dear Mr. Strahota:

Pursuant to your request I enclose herewith six (6) copies of Amendment No. 2 to the Registration Statement (No. 2-30859), Nos. 72, 73, 74, 75, 76 and 77; and five (5) copies of the Company's 1968 Annual Report to Stockholders.

We normally try to retain some sort of file in our office for eventual inclusion in a bound volume of the Registration Statement, but your request has now depleted that supply.

I know that the initial run for Amendment No. 2 was rather limited; however, if you need further copies of any of the enclosures, the Company may be able to supply them.

Very truly yours,

SEYMOUR KLEINMAN

SK:dw
Encs.

EXHIBIT B

A151

Name	Present Residence	Present Business Address	Relationship with Iota at Time of Act	Present Relationship With Iota
David W. Sass, Esq.	Unknown	100 E. 42nd Street New York, N.Y.	Attorney employed by Golenbock and Barell	None
Seymour Kleinman	7 North Clover Drive Great Neck, N.Y.	60 E. 42nd Street New York, N.Y.	Member of the firm of Golenbock and Barell	Member of the firm of Golenbock and Barell
Justin M. Golenbock	30 Cohawny Road Scarsdale, N.Y.	60 E. 42nd Street New York, N.Y.	Member of the firm of Golenbock and Barell	Member of the firm of Golenbock and Barell
Stuart M. Pellman	Unknown	540 Madison Avenue New York, N.Y.	Attorney employed by Golenbock and Barell	None
Rodney W. Loeb	Unknown	1900 Ave. of the Stars Los Angeles, Cal.	Vice President, Legal	None
A. Bruce Rozet	"	Unknown	Chairman of the Board, President and Director	None
Irving Goldstein	"	"	Vice President, Treasurer and Director	None
Oliver A. Unger	"	"	Executive Vice President and Director	None
Peter Gettinger	"	"	Secretary and Director	None
H. Igor Ansoff	"	"	Director	None
Peter Huang	"	"	Director	None
Gottfried von Meyern-Hohenberg	"	"	Director	None

A152

Name	Present Residence	Present Business Address	Relationship with Iota at Time of Act	Present Relationship With Iota
Benjamin F. Breslauer	Unknown	11530 Dona Dorotea Dr. Studio City, Cal.	Controller	None
Lillian K. Kubicek	10 U.S. Highway 41 S. Masaryktown, Florida 33512	Unknown	General Counsel for The Seeburg Corporation of Delaware	None
Neil B. Fisher	Unknown	"	Asst. General Counsel for The Seeburg Corporation of Delaware	None
Sidney Kibrick	"	"	Vice President, Real Estate	None
Howard D. Martin	"	"	Vice President, Oil and Gas	None
N. Clarkson Earl, Jr. (deceased)	" ----	" ----	Director	--
Richard Sarazen	"	"	Vice President Finance	None
Arne Kalm	"	"	Vice President, Corproate Development	None
Theodore Raynor	"	"		
B. J. Adelson	"	"		

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD LIPSKY, executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a BOBBY DARIN, deceased,	:	
Plaintiff,	:	Docket No. M-19-95
-against-	:	70 Civ. 5030
COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION and STREET SONGS, INC.,	:	CUM'S ANSWERS TO PLAINTIFF'S INTERROGATORIES
Defendants.	:	

Defendant Commonwealth United Music, Inc. ("CUM"), for its answers to plaintiff's interrogatories, dated November 30, 1973, states:

Interrogatories 1, 2, 3 and 4

1. If it is the position of Commonwealth United Music, Inc. (CUM) that it made any effort to cause the registration statement of November 27, 1968, covering, inter alia, 77,323 shares of Common Stock issued by Commonwealth United Corporation pursuant to a contract with plaintiff dated August 20, 1968 (the Registration Statement) to become effective at the earliest practicable time after the filing of the Registration Statement, describe each such effort and give the date or dates when made.

2. With respect to each person who directed or participated in any act referred to in your answer to Interrogatory 1, give his or her name, present residence address, present business address and his or her relationship with CUM both at the time of such act and at present.

3. Give the date and nature of each communication, written or otherwise, between (i) the Securities and Exchange Commission, or any representative thereof, and (i) CUM, or any one acting on its behalf, concerning (a) the Registration Statement, (b) any amendment thereof, or (c) the subject matter of the Registration Statement or of any amendment thereof.

4. Where, and in whose custody, are the records of any of the communications referred to in your answers to Interrogatory 3?

Answer:

CUM is now and at all times since its incorporation has been a wholly owned subsidiary of Iota Entertainment, Inc., which is now and at all times since its incorporation has been a wholly owned subsidiary of defendant Iota Industries, Inc. ("Iota"). Since 1970, CUM has been inactive, and it has no management apart from that of Iota and Iota Entertainment, Inc.

If CUM had a duty to use any effort to cause the Registration Statement referred to in the interrogatories to become effective, that effort was made for it by Iota as CUM's parent and issuer of the securities covered by the Registration Statement. Accordingly, Iota's Answers to Plaintiff's Interrogatories, made simultaneously herewith, are hereby incorporated in "Answer" to plaintiff's interrogatories to CUM.

Dated: New York, New York
September 6, 1974

COMMONWEALTH UNITED MUSIC, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION	Docket No. M-19-95
GERALD LIPSKY, Executor under the Will of WALDEN ROBERT CASSOTTO, a/k/a BOBBY DARIN, deceased, Plaintiff - against - COMMONWEALTH UNITED CORPORATION, et al., Defendants	70 Civ. 5030 PRETRIAL CONFERENCE ORDER

Pursuant to the order herein dated March 4, 1975, a pretrial conference was had on March 31, 1975 to hear argument of counsel on motions of all defendants to strike Exhibit C to the Amended Unified Complaint of plaintiff and certain allegations from said Amended Unified Complaint as enumerated in their Notices of Motion dated August 28, 1974; and to define and limit the issues to be tried in this action and to schedule discovery and trial of such issues as so limited; and

This Court having heard said motions to strike and argument of counsel at said pretrial conference and having considered all papers submitted on the said motions, and being of the opinion that the said motions are due to be granted; and

Plaintiff having limited the nature and scope of this action to a single cause of action seeking only equitable

relief, i.e., rescission of the contract of August 20, 1968 [awarding either restoration of the Darin Assets (as defined in the Amended Unified Complaint) or, if restoration thereof is not ordered, $2,000,000, the value thereof], an accounting, an injunction and an allowance for reasonable attorneys' and accountants' fees and the costs and disbursements of this action; and

This Court having by order and judgment entered in this docket on November 29, 1972, approved a Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, and section 4.1(d) of said Stipulation having reserved for plaintiff's decedent 10,000 shares of the common stock of defendant Iota Industries, Inc. ("Iota") in the Settlement Fund created by said Stipulation if he became a party thereto; and

Counsel for Iota having advised this Court at said pretrial conference on March 31, 1975, that they continue to hold as trustees under this Court's order of December 15, 1972 in this docket said 10,000 shares of Iota common stock so reserved for plaintiff's decedent available for distribution to plaintiff upon order of the Court; and

Defendants having advised the Court at said pretrial conference that they will plead not only a denial that Iota breached its agreement with Darin but also (a) that under said contract of August 20, 1968, plaintiff is not entitled to the equitable relief demanded in his complaint even if he proves all the factual allegations therein, and (b) that if plaintiff's decedent ever had any right to such equitable relief under said contract, such relief is now barred by reason of laches and estoppel of plaintiff's decedent; and

This Court being of the opinion that it would be in the interest of the parties and of this Court that the availability of the equitable relief demanded in the complaint, in the event plaintiff proves all the factual allegations therein, be decided first in this action, and if decided in plaintiff's favor as to one or more defendants, that the remaining defendants' affirmative defenses of laches and estoppel be separately tried and decided and that trial of the factual issues raised by plaintiff's complaint be held only if plaintiff prevails on trial of said affirmative defenses of one or more such defendants; and all parties having agreed to such sequence of determination of issues;

Accordingly, it is ORDERED:

1. That the motions to strike, noticed August 28, 1974, be and the same hereby are granted in all respects; and

2. That the Exhibit C and the following allegations are struck from the Amended Unified Complaint;

(a) in paragraph 10:

> " . . . Material omissions from such registration statement were cited in the complaint filed by the Commission in an action commenced against CUC in the United States District Court for the District of Columbia on October 2, 1969 to enjoin CUC from, inter alia:
>
> > 'making false and misleading statements, omitting to state all material facts, and failing to disclose fully and accurately all material facts in filings required to be made or, in fact, made with the Commission by defendant CUC in connection with the offer or proposed offer of any securities, or from engaging in any other activities in connection with defendant CUC in violation of Section 10(b) of the Exchange Act and the Rules and Regulations thereunder.'
>
> A copy of the complaint in said action is hereto annexed as Exhibit C and expressly made a part hereof."

(b) in paragraph 11:

". . . . was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the February 3, 1969 registration statement, in that said Amendment, inter alia, (i) omitted to state material facts as specified in paragraphs 8(b)(2), 8(b)(3), 8(c)(2), 8(d)(2) and 8(d)(3) of Exhibit C."

(c) in paragraph 13:

". ..Material omissions from such proxy statement were cited by the Commission in its aforesaid complaint against CUC."

(d) in paragraph 14:

". . Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the proxy statement mailed by CUC on June 24, 1969 to its stockholders in that said Amendment, inter alia, omitted to state material facts and failed to disclose fully and accurately material facts as specified in paragraphs 11 (a)-(d) of Exhibit C."

3. That plaintiff shall serve and file, within twenty (20) days of the entry of this Order, a further complaint, identical to said Amended Unified Complaint, but with the above stated allegations and Exhibit C deleted therefrom. Such further complaint shall be captioned and hereinafter referred to as the Second Amended Unified Complaint.

4. That within thirty (30) days after the service and filing of plaintiff's Second Amended Unified Complaint, defendants shall serve and file with their supporting briefs a motion under Fed. R. Civ. P. 12(b)(6) to dismiss said Second Amended Unified Complaint on the ground that said Second Amended Unified Complaint fails to state a claim upon which relief can be granted in that plaintiff cannot obtain the relief of rescission and related equitable relief demanded in said Second Amended Unified Complaint. If said motion is granted as to all defendants, this action shall be dismissed with prejudice, and the 10,000 shares of common stock of Iota reserved for plaintiff's decedent under the

Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, shall then be transferred to plaintiff.

5. That within thirty (30) days of the service and filing of said motion to dismiss, plaintiff shall serve and file his answering brief to said motion, and within fifteen (15) days of the service and filing of said answering brief defendants shall serve and file their reply briefs. The oral argument of said motion by counsel shall be scheduled by further order of this Court.

6. That if said motion to dismiss is denied as to any of the defendants, such defendants shall within thirty (30) days of the entry of the order of denial, serve and file their answers to the Amended Unified Complaint, including their affirmative defenses of laches and estoppel, as to which affirmative defenses all continuing parties shall be accorded pretrial discovery to the extent allowed upon application to this Court, and thereafter at a time to be fixed by further order of this Court a separate trial shall be held of said affirmative defenses, and if all of such defendants prevail thereon, this action shall be dismissed with prejudice and the 10,000 shares of common stock of Iota reserved for plaintiff's decedent under the Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, shall then be transferred to plaintiff.

7. That except as allowed by further order of the Court, all discovery, including plaintiff's interrogatories to defendants dated March 24, 1975 and plaintiff's

requests for admission dated March 24, 1975, be and hereby is stayed until thirty (30) days after the filing of an order of this Court determining the issues to be tried separately as directed in paragraph 6 hereof.

Done this 11th day of July, 1975.

Frank A. M. Johnson
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD LIPSKY, executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a BOBBY DARIN) deceased,	:	
Plaintiff,	:	SECOND AMENDED UNIFIED COMPLAINT FILED PURSUANT TO PRETRIAL CONFERENCE ORDER DATED JULY 11, 1975
v.	:	
COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION; and STREET SONGS, INC.,	:	Docket No. M-19-95 COMMONWEALTH CASES Index No. 70 Civ. 5030 (FHMcF)
Defendants.	:	

Plaintiff Gerald Lipsky, executor under the will of Walden Robert Cassotto (a/k/a Bobby Darin) deceased, by his attorneys, Patterson, Belknap & Webb, for his unified complaint against the defendants and each of them, alleges:

1. This action was duly commenced by Walden Robert Cassotto, also known as Bobby Darin ("Darin"), who died on December 20, 1973 domiciled in the State of Nevada and whose last will and testament has been duly admitted to probate by the Eighth Judicial District Court of the State of Nevada, County of Clark, which has duly issued letters testamentary thereunder to plaintiff, Darin's sole legal representative, who has been duly substituted in Darin's place and stead in this action. The matter in controversy herein exceeds, exclusive of interests and costs, the sum of $10,000.

2. Upon information and belief:

(a) Defendant COMMONWEALTH UNITED CORPORATION

(now known as IOTA INDUSTRIES, INC. and hereinafter referred to as "CUC"), is, and at all times herein mentioned was, a Delaware corporation doing business in the Borough of Manhattan, New York City, and having its principal place of business in a state other than Nevada.

(b) Defendant COMMONWEALTH UNITED MUSIC, INC. (hereinafter referred to as "CUM") is, and at all times herein mentioned was, a Delaware corporation doing business in the Borough of Manhattan, New York City and having its principal place of business in a state other than Nevada. At all times herein mentioned the entire outstanding stock of CUM was, and now is, owned or controlled by CUC.

(c) Defendant ALLEY MUSIC CORPORATION (hereinafter referred to as "Alley Music") and defendant STREET SONGS, INC. (hereinafter referred to as "Street Songs") are New York corporations doing business in the Borough of Manhattan, New York City, and having their principal places of business in a state other than Nevada.

(d) Defendant THE HUDSON BAY MUSIC COMPANY, which was formerly known as ALLEY-STREET MUSIC VENTURE and is hereinafter referred to as "Hudson Bay", is a joint venture of defendants Alley Music and Street Songs, does business in the Borough of Manhattan, New York City, and has its principal place of business in a state other than Nevada.

3. Darin, a professional songwriter, singer and actor, for many years until shortly before his death, performed on radio and television, in motion pictures, in concert halls and on the stage and his musical compositions and recordings have been sold in large volume throughout the United States and abroad. Approximately twelve years ago,

Darin became the sole owner of the outstanding shares of stock of T. M. Music, Inc. (hereinafter referred to as "TM"), a music publisher incorporated in New York State and doing business in New York City. Under Darin's direction and ownership TM became one of the principal publishers of popular music and recordings in the United States as a result of the high calibre of those performing artists, authors, composers, arrangers and adapters of musical compositions and associated personnel, including Darin, who were involved in TM's production of copyrighted songs and recordings thereof.

4. On or about August 20, 1968, after negotiations in New York City, Darin entered into a written contract with CUC and CUM pursuant to which, in return for Darin's transfer to CUM of all outstanding shares of TM stock, which were then owned in their entirety by Darin, CUC became obligated to issue to Darin such number of shares of CUC common stock, with a par value of One Dollar ($1.00) per share as would have an approximate market value of $1,300,000. A true copy of said contract is attached hereto as Exhibit A.

5. Under the terms of said contract, and specifically paragraphs 4 and 14 thereof, CUC expressly represented to and covenanted with Darin that during the year 1968 it would file, and thereafter use its best efforts to cause to become effective at the earliest practicable time, a registration statement under the Securities Act of 1933, as amended, covering the shares of CUC common stock to be issued to Darin upon the closing of said contract. Said contract also provided that, if registration of said stock should become effective more than 60 days after the closing

date, Darin would be protected against an intervening decline in market value of said stock by CUC's obligation to issue up to 77,323 additional shares of such stock to Darin. In a prospectus dated August 28, 1968 filed with the Securities and Exchange Commission CUC represented that pursuant to the contract of August 20, 1968 Darin would receive stock worth at least $1,300,000.

6. In reliance upon the representations and covenants described in paragraph 5, Darin entered into the contract of August 20, 1968 calling for the exchange of his TM stock for shares of CUC common stock and thereafter pursuant to said contract delivered all of his shares of TM stock in exchange for 77,323 shares of unregistered CUC stock at the closing of said contract on September 13, 1968. In conjunction with and at the time of the closing of said contract and in consideration thereof Darin entered into an exclusive songwriter's contract with Chardon Music, Inc., a New York music publisher owned or controlled by CUC, and said songwriter's contract, which is expressly governed by New York law and of which a true copy is hereto annexed as Exhibit B, was assigned to TM after CUC acquired control of Darin's TM stock pursuant to the contract of August 20, 1968. Accordingly, Darin became obligated under said songwriter's contract until September 13, 1973 to render exclusively to TM substantially all of his services as author, composer, arranger and adapter of musical compositions.

7. At all times pertinent to the complaint, CUC common stock was listed and traded on the American Stock Exchange, a national securities exchange, except for the period after July 22, 1969, when at the instance of CUC said

exchange suspended trading therein. On August 1, 1969, the Securities and Exchange Commission at the instance of CUC directed that over-the-counter trading in CUC securities be suspended; on or about December 23, 1969, over-the-counter trading in CUC common stock was resumed. On September 13, 1968, the closing quotation for CUC stock on the American Stock Exchange was 18; as of August 20, 1970, the over-the-counter price of CUC common stock was approximately $ .50 bid, $ .75 asked.

8. On September 13, 1968, at the time of the closing of said contract, TM's assets included a substantial collection of original and unique musical compositions by Darin and by other songwriters, and copyrights, renewal copyrights and extensions therein; licenses to publish musical compositions; contracts with songwriters, contracts for the administration of a catalogue of musical compositions, and all of the outstanding stock of: TOWNE MUSIC CORP., a New York corporation, T. M. MUSIKVERLARGE, G. M. B. H., a German corporation, T. M. MUSIC (Australia) Pty. Ltd., an Australian corporation, and T. M. MUSIC LIMITED, a British corporation. In 1967 said assets generated gross income in excess of $373,000.

9. On November 27, 1968, CUC's New York corporate attorneys caused a registration statement to be filed with the Securities and Exchange Commission (the Commission) covering the 77,323 shares of CUC common stock issued to Darin and his designees pursuant to the contract of August 20, 1968. Thereafter, in breach of the covenants contained in paragraphs 4 and 14 of said contract, CUC,

although in frequent communication with the Commission with regard to other corporate transactions, failed to take reasonable steps, much less use its best efforts, to cause registration of Darin's stock to become effective at the earliest practicable time.

10. On February 3, 1969, CUC filed a registration statement with the Commission of shares of its common and preferred stock which it proposed to use in a complex program for acquisition of stock in Warner Bros. - Seven Arts Limited, one of a series of proposed corporate acquisitions upon which CUC embarked late in 1968 and early in 1969.

11. On April 29, 1969, CUC filed with the Commission Amendment No. 1 to its November 27, 1968 registration statement. Said Amendment omitted to state the nature and extent of CUC's relationship with Kleiner, Bell & Co., Incorporated, CUC's investment banker and financial adviser, in connection, inter alia, with a July 1968 public offering of $15,000,000 of CUC's 6% Convertible Debentures; an August 1968 sale of 800,000 shares of CUC Common Stock by Sunasco, Incorporated to CUC and its assignee; the acquisition of The Seeburg Corporation in 1968; and the sale of participating units in Sunset's 1968 exploration programs. In addition, said Amendment omitted to state that CUC had obligated itself to pay, pursuant to an agreement dated March 18, 1969, a price approximately $3,350,000 (92%) in excess of the market price for 86,000 shares of common stock of Perfect Film & Chemical Corporation.

12. From time to time, commencing in the early spring of 1969, Darin inquiried of Charles Koppelman

("Koppelman"), who during the years 1968, 1969 and 1970 served as an officer of CUM and/or a director of CUC, as to the status of efforts of CUC and its New York corporate attorneys to effectuate registration of his CUC stock and was given repeated assurance by Koppelman that such registration would soon become effective and that, if it did not, Darin could recover ownership and control of TM and its assets as of the time of Darin's transfer of his TM stock.

13. On June 24, 1969, CUC mailed to its stockholders proxy materials, including a proxy statement previously filed with the Commission, with respect to a stockholders' meeting called to consider, inter alia, CUC's proposed acquisition from Dart Industries, Inc. of its Rexall Drug business by means of an exchange of securities.

14. On June 27, 1969, CUC filed with the Commission Amendment No. 2 to its November 27, 1968 Registration Statement.

15. As a result of the representations and assurances given Darin by Koppelman referred to in paragraph 12, Darin withheld action to rescind the contract of August 20, 1968 until April 7, 1970, at which time he demanded of CUC that ownership of TM and its assets be restored to him because of the failure of CUC to fulfill its aforesaid commitments.

16. On August 27, 1970, Darin commenced this action against CUC, CUM and others, in the United States District Court for the Central District of California, where CUC then had its principal office, seeking, inter alia, rescission of the contract of August 20, 1968 and offering

to restore the consideration furnished by CUC and CUM under said contract or in connection therewith, including any contingent right to additional CUC securities as provided by paragraph 10.3 of said contract. By this amended unified complaint plaintiff reasserts such offer and demands that CUC and CUM and any transferee or successor of either of them give an accounting of its profits upon any and all of such assets.

17. After the commencement of Darin's action, by agreements made in New York City and expressly governed by the laws of New York State, CUC caused to be assigned, or otherwise transferred, to one or more of Hudson Bay, Alley Music, Street Songs, Koppelman, Donald Rubin and Koppelman-Rubin Enterprises, each of whom was engaged in the music publishing business in New York City, (i) all of the assets owned by TM as of the time its entire capital stock was acquired from Darin by CUM in 1968 and all rights which had accrued upon such assets before their transfer on or about November 19, 1970; and (ii) the exclusive songwriter's contract referred to in Paragraph 6 and all rights which had theretofore accrued thereunder, including rights in and to various copyrighted musical compositions composed by Darin since September 13, 1968. Hereinafter the aforementioned assets are collectively referred to as the TM Assets.

18. At the time of each such assignment and transfer referred to in paragraph 17, each of the defendants knew of the pendency of this action and Darin's demand herein for rescission of the exclusive songwriter's contract

and of the contract of August 20, 1968 and accordingly for restoration to Darin of the TM Assets and of any rights accruing thereunder. In connection with such assignments and transfers CUC, CUM, Koppelman and others undertook to indemnify Hudson Bay, Alley Music and Street Songs against obligations or liabilities to Darin (including an award of the TM assets to Darin) arising out of or in connection with the contract of August 20, 1968.

19. On or after November 19, 1970, at a time or times unknown, the TM Assets were placed under the ownership and/or control of Hudson Bay, Alley Music and Street Songs.

20. On October 9, 1972, Hudson Bay released Darin as of October 1, 1972 from any further obligation under the exclusive songwriter's contract but, unless enjoined, Hudson Bay, Alley Music and Street Songs, or one or more of them, may attempt further transfers or other dispositions of the TM Assets, including the rights, the royalties and other profits which have accrued and will accrue thereon.

21. Although Darin duly performed all obligations on his part required to be performed pursuant to the contract of August 20, 1968 and pursuant to the exclusive songwriter's contract, CUC failed to use its best efforts to effectuate registration of Darin's shares of CUC stock at the earliest practicable time after filing a registration statement covering such stock in 1968 and thereby breached its covenants under the contract of August 20, 1968; such covenants were material and essential elements of said contract; and such breach effected a total failure of the

consideration promised to Darin by CUC under said contract, which in paragraph 13.7 provides that for CUC's failure to comply with any covenant contained in said contract, in addition to all other available remedies, plaintiff is entitled to injunctive and other equitable relief, and to recovery from CUC and CUM of all loss, cost and expense (including reasonable attorneys' fees) incurred by Darin and plaintiff in securing such relief.

WHEREFORE, plaintiff prays for judgment:

1. Rescinding the contract of August 20, 1968 between defendant Commonwealth United Corporation and defendant Commonwealth United Music, Inc., on the one hand, and Darin, on the other, and directing the defendants (and any transferee of any of their interests in and to T. M. Music, Inc. and its assets, including the exclusive songwriter's contract of September 13, 1968 between Darin and Chardon Music, Inc.), upon delivery to the Court (for apportionment by the Court among the defendants and any such transferees as their interests may appear) of 77,323 shares of stock of Commonwealth United Corporation, to make full restoration to plaintiff as Darin's sole legal representative of: (i) all rights, royalties and other profits heretofore or hereafter accruing under the aforesaid exclusive songwriter's contract, (ii) the assets owned by T. M. Music, Inc. as of the time on September 13, 1968 when all of the stock thereof was transferred by Darin pursuant to the contract of August 20, 1968 and (iii) all rights, royalties and other profits accruing upon such assets since September 13, 1968 (hereinafter the rights and assets

described in (i), (ii) and (iii) are referred to as the Darin Assets;

2. Enjoining each of the defendants and any transferee of an interest in any of the Darin Assets from transferring or further encumbering any of the Darin Assets;

3. Requiring an accounting of all profits derived from any of the Darin Assets by the defendants and any transferee of an interest in any of the Darin Assets;

4. If restoration to plaintiff of the Darin Assets should not be ordered, directing defendants to pay plaintiff $2,000,000 in damages; and

5. Awarding to plaintiff the costs and disbursements of this action, including an allowance for reasonable attorneys' and accountants' fees, and such other and further relief as to the Court may seem just and proper in the premises.

PATTERSON, BELKNAP & WEBB
Attorneys for Plaintiff

By _____
A Member of the Firm

30 Rockefeller Plaza
New York, New York 10020
(212) 541-4000

New York, New York
July 31, 1975

(FOR EXHIBIT A SEE APPENDIX
PAGES A22-A62)

(FOR EXHIBIT B SEE APPENDIX
PAGES A83-A93)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

GERALD LIPSKY, executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a BOBBY DARIN) deceased,

Plaintiff,

-against-

COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION; and STREET SONGS, INC.,

Defendants.

- -X

Docket No. M-19-95
COMMONWEALTH CASES

Index No.
70 Civ. 5030 (FHMcF)

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the Second Amended Unified Complaint of the plaintiff, and upon all prior proceedings had herein, defendants Iota Industries, Inc. and Commonwealth United Music, Inc., by their undersigned attorneys, will move this Court at a time and place to be fixed by this Court for an order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing said Second Amended Unified Complaint on the ground that said Second Amended Unified Complaint fails to state a claim upon which relief may be granted in that plaintiff cannot obtain the relief of rescission and related equitable relief demanded

in said Second Amended Unified Complaint, and directing that this action be dismissed with prejudice, and that the ten thousand shares of common stock of Iota Industries, Inc. reserved for plaintiff's decedent under the Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, shall then be transferred to plaintiff.

Dated: New York, New York

August 26, 1975

TOWNLY, UPDIKE, CARTER & RODGERS

By _____
A Member of the Firm
Attorneys for Iota Industries, Inc. and Commonwealth United Music, Inc., defendants
220 East 42nd Street
New York, New York 10017
(212) 682-4567

TO:

PATTERSON, BELKNAP & WEBB
Attorneys for Plaintiff
30 Rockefeller Plaza
New York, New York 10020

LORD, DAY & LORD
Attorneys for Hudson Bay Music Company, Alley Music Corporation and Street Songs, Inc., defendants
25 Broadway
New York, New York 10004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD LIPSKY, executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a BOBBY DARIN) deceased, Plaintiff, - against - COMMONWEALTH UNITED CORPORATION, (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION; and STREET SONGS, INC., Defendants.	Docket No. M-19-95 COMMONWEALTH CASES Index No. 70 Civ. 5030 (FHMcF) NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the Second Amended Unified Complaint of the plaintiff, and upon all prior proceedings had herein, defendants The Hudson Bay Music Company, formerly known as Alley-Street Music Venture, Alley Music Corporation and Street Songs, Inc., by their undersigned attorneys, will move this Court at a time and place to be fixed by this Court for an order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing said Second Amended Unified Complaint on the ground that said Second Amended Unified Complaint fails to state a claim upon which relief may be granted in that plaintiff cannot obtain the relief of rescission and related equitable relief demanded in said Second Amended Unified Complaint.

Dated: New York, New York
August 26, 1975

LORD, DAY & LORD

By: _____
A Member of the Firm
Attorneys for Defendants
Hudson Bay Music Company,
Alley Music Corporation
and Street Songs, Inc.
25 Broadway
New York, New York 10004

(FOR EXHIBIT B SEE APPENDIX
PAGES A83-A96)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD LIPSKY, executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a/ BOBBY DARIN) deceased,	:	
Plaintiff,	:	AFFIDAVIT
v.	:	
COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.): COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION; and STREET SONGS, INC.	:	Docket No. M-19-95 Commonwealth Cases
Defendants.	:	Index No. 70 Civ. 5030 (FHMcF)

State of New York)
: ss:
County of New York)

THOMAS THACHER, being duly sworn deposes and says:

I am a member of the bar of this Court and of the firm of Patterson, Belknap & Webb, attorneys for the plaintiff in this action. I am making this affidavit in connection with the pending Rule 12(b)6 motions of the defendants directed to the Second Amended Unified Complaint Filed Pursuant to Pretrial Conference Order dated July 11, 1975.

As shown in plaintiff's accompanying memorandum in opposition to these motions, it is the rule in this Circuit that defendants may not succeed on such motions unless it is shown that as a matter of law the plaintiff could not prevail under any state of facts which might be established in support of the claims of the Complaint.

While it is plaintiff's position, as set forth in

its memorandum in opposition to the defendants' motions, that no particularization beyond the allegations of plaintiff's current pleading is required under the Federal Rules of Civil Procedure, it is the purpose of this affidavit to point out (i) facts already established in this action and (ii) particularization already supplied to the defendants herein, because such elements are ignored in the defendants' moving papers and are directly opposed to various contentions made therein.

In apparently contending that under the pleading in issue proof cannot be adduced to show that Iota did not use best efforts to cause registration of Darin's shares to become effective at the earliest practicable time, Iota ignores its own Interrogatory Answers dated September 6, 1974 (page 9), showing inter alia, (1) that not until June 27, 1969 - seven months after Iota's initial filing with the Securities and Exchange Commission - did Iota file a request with the Commission that such registration become effective, (2) that Iota made no effort to effectuate registration of Darin's shares after August 1, 1969, and (3) that it has no knowledge that their registration ever was effective.

Relevant to this bald contention is the showing in the same set of Interrogatory Answers (at pages 2-5) that the lapse of time between initial filing and effective date of each of Iota's registration filings with the Commission in 1968 before its November filing covering Darin's shares was as follows:

Registration No.	Initial Filing	Effective Date	No./Days
2-28045	1/17/68	1/31/68	14
2-29080	5/17/68	8/28/68	103
2-29286	6/11/68	7/25/68	44
2-30223	9/23/68	10/16/68	23

These data indicate a median lapse of time of 33.5 days or an average of 46 days - a lamentable contrast with the 212 days that elapsed in this case between initial filing and the first request filed with the Commission for effectuation.

Further, whatever the significance of the defendants' contention that in the Complaint no breach by CUM, Iota's wholly-owned subsidiary, is charged it should be brought to the Court's attention that in its Interrogatory Answers dated September 6, 1974 CUM states:

> "Since 1970, CUM has been inactive, and it has no management apart from that of Iota and Iota Entertainment, Inc.
>
> "If CUM had a duty to use an effort to cause the Registration Statement . . . to become effective, that effort was made for it by Iota as CUM's parent and issuer of the securities covered by the Registration Statement."

Finally it must be pointed out that, after granting on March 31, 1975 the defendants' motion to strike from plaintiff's prior pleading all references to the position taken by the Commission in litigation as to these and concurrent filings relating to Iota and its securities, the Court in settling the terms of the pretrial conference order of July 11, 1975, dealing inter alia with the motion to strike, proceeded not only to strike such references but also to preclude, over plaintiff's further objections, plaintiff's repleading of, the earlier pleaded deficiences in Iota's proxy statement and in filings with the Commission covering Darin's shares but without reference to the fact that the Commission concurred in these views. (To make this entirely clear, copies of our proposed pretrial conference order and my two letters to the Court of May 5, 1975 and May 16, 1975

are hereto annexed, as none of these papers appear to be on file in the Clerk's office.)

Iota's counsel, having persuaded the Court to refuse to permit plaintiff to replead the identical deficiencies in those papers which it had already pleaded, now takes a further leap and cites the absence of such elements in aid of his argument that plaintiff's pleading should be disqualified altogether. While such a position might be tolerable in a court conceived by Kafka, it should be given no weight in a United States District Court on a motion under Rule 12(b)6.

Thomas Thacher

Sworn to before me
this 29th day of September,
1975.

Notary Public

LAURA BERNSTEIN
Notary Public, State of New York
No. 41-0271945
Qualified in Queens County
Commission Expires March 30, 1977

LETTER OF MAY 5, 1975 AND ENCLOSURES

COPY

PATTERSON, BELKNAP & WEBB

May 5, 1975

Honorable Frank H. McFadden
Federal Building
Birmingham, Alabama 35203

Seeburg-Commonwealth United
Litigation - Docket M-19-95
Darin v. Commonwealth United
Corporation - 70 Civ. 5030

Dear Judge McFadden:

Finding some problems in the pretrial order proposed by the defendants in the above-entitled action, I am enclosing a revised form of order, and a red-lined copy of Mr. Hindman's version. Our revisions are requested for the following reasons:

I. Pages 1-2, third paragraph. To avoid any ambiguity as to the scope of the forthcoming Rule 12(b)(6) motion this paragraph should set forth all components of the equitable relief demanded in the Amended Unified Complaint with respect to the several defendants. While the quotation from our brief is accurate, its use in the context of the order the defendants propose could create the erroneous impression that we have receded from our claim for a monetary award in the event that the Court concludes that plaintiff is entitled to rescission but that restoration of the Darin Assets should not be awarded.

II. Page 3, first paragraph. As we understand the Court's concept, the first matter to be determined comprises the Rule 12(b)(6) defense of each defendant; accordingly, the order should speak in terms of that Rule rather than the "availability of equitable relief".

III. Page 3, Paragraph 2(a). A typographical error has been corrected in subparagraph 2.

IV. Page 3, Paragraph 3. This paragraph has been revised to make it clear that the plaintiff in the revised paragraphs of his amended pleading may allege deficiencies on the part of Commonwealth United Corporation in its efforts to cause the registration statement covering Darin's shares to become effective.

V. Page 4, Paragraph 4.

(a) For the reasons noted in "I", characterization of the relief should accord with the prayer for relief; therein a monetary award is sought alternatively, but only if restoration of the Darin Assets is not ordered.

(b) The second revision obviates problems of construction which would otherwise arise if the Rule 12b(6) motions are granted as to some, but not all, defendants.

VI. Page 5, Paragraph 6.

(a) The first revision overcomes the problem referred to in "V(b)".

(b) The second revision shortens the period within which defendant shall answer, to that permitted by the Federal Rules of Civil Procedure.

(c) The third revision is intended to make it clear that, in the event of a decision favorable to the plaintiff on the first matter to be determined pursuant to this order, the Rule 12b(6) defense may not be raised again.

Copies of this letter and of each enclosure are being sent to Messrs. Hindman and Greathead.

Respectfully,

Thomas Thacher

bc: Gerald Lipsky, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	
SEEBURG-COMMONWEALTH UNITED LITIGATION	:	Docket No. M-19-95
GERALD LIPSKY, Executor under the Will of WALDEN ROBERT CASSOTTO, a/k/a BOBBY DARIN, deceased,	:	70 Civ. 5030
Plaintiff,	:	
- against -	:	PRETRIAL CONFERENCE ORDER
COMMONWEALTH UNITED CORPORATION, et al.,	:	
Defendants.	:	

Pursuant to the order herein dated March 4, 1975, a pretrial conference was had on March 31, 1975 to hear argument of counsel on motions of all defendants to strike Exhibit C to the Amended Unified Complaint of plaintiff and certain allegations from said Amended Unified Complaint as enumerated in their Notices of Motion dated August 28, 1974; and to define and limit the issues to be tried in this action and to schedule discovery and trial of such issues as so limited; and

This Court having heard said motions to strike and argument of counsel at said pretrial conference and having considered all papers submitted on the said motions, and being of the opinion that the said motions are due to be granted; and

Plaintiff having limited the nature and scope of this action to a single cause of action seeking only equitable

relief, i.e., rescission of the contract of August 20, 1968 (awarding either restoration of the Darin Assets (as defined in the Amended Unified Complaint) or, if restoration thereof is not ordered, $2,000,000, the value thereof), an accounting, an injunction and an allowance for reasonable attorneys' and accountants' fees and the costs and disbursements of this action; and

This Court having by order and judgment entered in this docket on November 29, 1972, approved a Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, and section 4.1(d) of said Stipulation having reserved for plaintiff's decedent 10,000 shares of the common stock of defendant Iota Industries, Inc. ("Iota") in the Settlement Fund created by said Stipulation if he became a party thereto; and

Counsel for Iota having advised this Court at said pretrial conference on March 31, 1975, that they continue to hold as trustees under this Court's order of December 15, 1972 in this docket said 10,000 shares of Iota common stock so reserved for plaintiff's decedent available for distribution to plaintiff upon order of the Court; and

Defendants having advised the Court at said pretrial conference that they will plead not only a denial that Iota breached its agreement with Darin but also (a) that under said contract of August 20, 1968, plaintiff is not entitled to the equitable relief demanded in his complaint even if he proves all the factual allegations therein, and (b) that if plaintiff's decedent ever had any right to such equitable relief under said contract, such relief is now barred by reason of laches and estoppel of plaintiff's decedent; and

This Court being of the opinion that it would be in the interest of the parties and of this Court that at the outset a determination be made as to whether the complaint fails to state a claim upon which equitable relief can be granted and, if determined in plaintiff's favor, that the defendants' affirmative defenses of laches and estoppel be separately tried and decided, and that trial of the factual issues raised by plaintiff's complaint be held only if plaintiff prevails on trial of said affirmative defenses;

Accordingly, it is ORDERED:

1. That the motions to strike, noticed August 28, 1974, be and the same hereby are granted in all respects; and

2. That the Exhibit C and the following allegations are striken from the Amended Unified Complaint;

(a) in paragraph 10:

> "Material omissions from such registration statement were cited in the complaint filed by the Commission in an action commenced against CUC in the United States District Court for the District of Columbia on October 2, 1969 to enjoin CUC from, inter alia:
>
> > 'making false and misleading statements, omitting to state all material facts, and failing to disclose fully and accurately all material facts in filings required to be made or, in fact, made with the Commission by defendant CUC in connection with the offer or proposed offer of any securities, or from engaging in any other activities in connection with defendant CUC in violation of Section 10(b) of the Exchange Act and the Rules and Regulations thereunder.'
>
> A copy of the complaint in said action is hereto annexed as Exhibit C and expressly made a part hereof."

(b) in paragraph 11:

"Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the February 3, 1969 registration statement, in that said Amendment, inter alia, (i) omitted to state material facts as specified in paragraphs 8(b)(2), 8(b)(3), 8(c)(2), 8(d)(2) and 8(d)(3) of Exhibit C."

(c) in paragraph 13:

"Material omissions from such proxy statement were cited by the Commission in its aforesaid complaint against CUC."

(d) in paragraph 14:

"Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the proxy statement mailed by CUC on June 24, 1969 to its stockholders in that said Amendment, inter alia, omitted to state material facts and failed to disclose fully and accurately material facts as specified in paragraphs 11(a)-(d) of Exhibit C."

3. That plaintiff shall serve and file, within ten (10) days of entry of this order, a further complaint (i) which shall be captioned and hereinafter referred to as the Second Amended Unified Complaint, (ii) which shall be identical in content to the Amended Unified Complaint with the exception of Exhibit C and paragraphs 10, 11, 13 and 14 thereof, (iii) from which Exhibit C shall be deleted, and (iv) in which paragraphs 10, 11, 13 and 14 shall contain no reference to the action commenced against Commonwealth United Corporation by the Securities and Exchange Commission in the United States District Court for the District of Columbia on October 2, 1969 or the complaint filed therein.

4. That by June 1, 1975 or within thirty (30) days after the service and filing of plaintiff's Second Amended Unified Complaint, whichever is later, defendants shall serve and file with their supporting briefs a motion under FRCP Rule 12(b)(6) to dismiss said Second Amended Unified Complaint on the ground that said Second Amended

Unified Complaint fails to state a claim upon which relief can be granted in that plaintiff cannot obtain the relief of rescission and related equitable relief demanded in said Second Amended Unified Complaint. If it is determined that the Second Amended Unified Complaint does not state a claim against any one or more of the defendants upon which equitable relief can be granted, this action shall be dismissed with prejudice, and the 10,000 shares of common stock of Iota reserved for plaintiff's decedent under the Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, shall then be transferred to plaintiff.

5. That by July 1, 1975 or within thirty (30) days of the service and filing of said motion to dismiss, whichever is later, plaintiff shall serve and file his answering brief to said motion, and by July 15, 1975 or within fifteen (15) days of the service and filing of said answering brief, whichever is later, defendants shall serve and file their reply briefs. The oral argument of said motion by counsel shall be scheduled by further order of this Court.

6. That if it is determined that the Second Amended Unified Complaint states a claim upon which equitable relief can be granted as to any one or more of the defendants, each such defendant shall within twenty (20) days of the entry of the order, serve and file its answer to the Second Amended Unified Complaint, including the affirmative defenses of laches and estoppel (but excluding the defense that the complaint fails to state a claim upon which equitable relief can be granted), as to which affirmative defenses all parties shall be accorded pretrial discovery to the extent allowed upon application to this Court, and thereafter at a time to be fixed by further order of this Court a separate trial shall be held

of said affirmative defenses, and if defendants prevail thereon, this action shall be dismissed with prejudice and the 10,000 shares of common stock of Iota reserved for plaintiff's decedent under the Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972 shall then be transferred to plaintiff.

7. That except as allowed by further order of the Court, all discovery, including plaintiff's interrogatories to defendants dated March 24, 1975 and plaintiff's requests for admission dated March 24, 1975, be and hereby is stayed until thirty (30) days after the filing of an order of this Court determining the issues to be tried separately as directed in paragraph 6 hereof.

DONE this day of May, 1975.

United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: SEEBURG-COMMONWEALTH UNITED LITIGATION	Docket No. M-19-95
GERALD LIPSKY, Executor under the Will of WALDEN ROBERT CASSOTTO, a/k/a BOBBY DARIN, Deceased, Plaintiff, - v - COMMONWEALTH UNITED CORPORATION, et al., Defendants.	70 Civ. 5030 PRETRIAL CONFERENCE ORDER

Pursuant to the order herein dated March 4, 1975, a pretrial conference was had on March 31, 1975 to hear argument of counsel on motions of all defendants to strike Exhibit C to the Amended Unified Complaint of plaintiff and certain allegations from said Amended Unified Complaint as enumerated in their Notices of Motion dated August 28, 1974; and to define and limit the issues to be tried in this action and to schedule discovery and trial of such issues as so limited; and

This Court having heard said motions to strike and argument of counsel at said pretrial conference and having considered all papers submitted on the said motions, and being of the opinion that the said motions are due to be granted; and

Plaintiff having limited the nature and scope of this action as stated at page 3 of his memorandum in opposition to said motions as follows:

> "The complaint now before the Court... in its single cause of action seeks only equitable relief, principally rescission of the

contract of August 20, 1968 on account of Iota's [alleged] breach of its express undertaking to use its best efforts to cause registration of Darin's shares of stock to become effective at the earliest practicable time after filing a registration statement covering such shares in 1968."

and

This Court having by order and judgment entered in this docket on November 29, 1972, approved a Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, and section 4.1(d) of said Stipulation having reserved for plaintiff's decedent 10,000 shares of the common stock of defendant Iota Industries, Inc. ("Iota") in the Settlement Fund created by said Stipulation if he became a party thereto; and

Counsel for Iota having advised this Court at said pretrial conference on March 31, 1975, that they continue to hold as trustees under this Court's order of December 15, 1972 in this docket said 10,000 shares of Iota common stock so reserved for plaintiff's decedent available for distribution to plaintiff upon order of the Court; and

Defendants having advised the Court at said pretrial conference that they will plead not only a denial that Iota breached its agreement with Darin but also (a) that under said contract of August 20, 1968, plaintiff is not entitled to the equitable relief demanded in his complaint even if he proves all the factual allegations therein, and (b) that if plaintiff's decedent ever had any right to such equitable relief under said contract, such relief is now barred by reason of laches and estoppel of plaintiff's decedent; and

This Court being of the opinion that it would be in the interest of the parties and of this Court that the availability of the equitable relief demanded in the complaint, in the event plaintiff proves all the factual allegations therein, be decided first in this action, and if decided in plaintiff's favor, that the defendants' affirmative defenses of laches and estoppel be separately tried and decided and that trial of the factual issues raised by plaintiff's complaint be held only if plaintiff prevails on trial of said affirmative defenses;

Accordingly, it is ORDERED:

1. That the motions to strike, noticed August 28, 1974, be and the same hereby are granted in all respects; and

2. That the Exhibit C and the following allegations are striken from the Amended Unified Complaint:

(a) in paragraph 10:

> "Material omissions from such registration statement were cited in the complaint filed by the Commission in an action commenced against CUC in the United States District Court for the District of Columbia on October 2, 1969 to enjoin CUC from, inter alia:
>
> > 'making false and misleading statements, omitting to state all material facts, and failing to disclose fully and accurately all material facts in filings required to be made or, in fact, made with the Commission by defendant CUC in connection with the offer or proposed offer to any securities, or from engaging in any other activities in connection with defendant CUC in violation of Section 10(b) of the Exchange Act and the Rules and Regulations thereunder.'
>
> A copy of the complaint in said action is hereto annexed as Exhibit C and expressly made a part hereof."

(b) in paragraph 11:

> "Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the February 3, 1969

registration statement, in that said Amendment, inter alia, (i) omitted to state material facts as specified in paragraphs 8(b)(2), 8(b)(3), 8(c)(2), 8(d)(2) and 8(d)(3) of Exhibit C."

(c) in paragraph 13:

"Material omissions from such proxy statement were cited by the Commission in its aforesaid complaint against CUC."

(d) in paragraph 14:

"Said Amendment was subject to objection by the Commission on grounds noted in its aforesaid complaint with respect to the proxy statement mailed by CUC on June 24, 1969 to its stockholders in that said Amendment, inter alia, omitted to state material facts and failed to disclose fully and accurately material facts as specified in paragraphs 11(a)-(d) of Exhibit C."

3. That plaintiff shall serve and file, within ten (10) days of the entry of this order, a further complaint, identical to said Amended Unified Complaint, but with the above stated allegations and Exhibit C deleted therefrom. Such further complaint shall be captioned and hereinafter referred to as the Second Amended Unified Complaint.

4. That by June 1, 1975 or within thirty (30) days after the service and filing of plaintiff's Second Amended Unified Complaint, whichever is later, defendants shall serve and file with their supporting briefs a motion under FRCP Rule 12(b)(6) to dismiss said Second Amended Unified Complaint on the ground that said Second Amended Unified Complaint fails to state a claim upon which relief can be granted in that plaintiff cannot obtain the relief of rescission and related equitable relief demanded in said Second Amended Unified Complaint. If said motion is granted, this action shall be dismissed with prejudice, and the 10,000 shares of common stock of Iota reserved for plaintiff's decedent under the Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, shall then be transferred to plaintiff.

5. That by July 1, 1975 or within thirty (30) days of the service and filing of said motion to dismiss, whichever is later, plaintiff shall serve and file his answering brief to said motion, and by July 15, 1975 or within fifteen (15) days of the service and filing of said answering brief, whichever is later, defendants shall serve and file their reply briefs. The oral argument of said motion by counsel shall be scheduled by further order of this Court.

6. That if said motion to dismiss is denied, defendants shall within thirty (30) days of the entry of the order of denial, serve and file their answers to the Second Amended Unified Complaint, including their affirmative defenses of laches and estoppel, as to which affirmative defenses all parties shall be accorded pretrial discovery to the extent allowed upon application to this Court, and thereafter at a time to be fixed by further order of this Court a separate trial shall be held of said affirmative defenses, and if defendants prevail thereon, this action shall be dismissed with prejudice and the 10,000 shares of common stock of Iota reserved for plaintiff's decedent under the Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, shall then be transferred to plaintiff.

7. That except as allowed by further order of the Court, all discovery, including plaintiff's interrogatories to defendants dated March 24, 1975 and plaintiff's requests for admission dated March 24, 1975, be and hereby is stayed until thirty (30) days after the filing of an order of this Court determining the issues to be tried separately as directed in paragraph 6 hereof.

Done this ____ day of April, 1975.

UNITED STATES DISTRICT JUDGE

LETTER OF MAY 16, 1975 AND ENCLOSURES

COPY

PATTERSON, BELKNAP & WEBB

May 16, 1975

Hon. Frank H. McFadden
United States District Judge
Federal Building
Birmingham, Alabama 35203

Darin v. Iota, et al.
Docket No. M-19-95
70 Civ. 5030

Dear Judge McFadden:

Mr. Hindman's May 8 letter and newly proposed order were received May 12. Having had an opportunity to consider them, I am writing to explain why his latest proposal should not be adopted by the Court.

As plaintiff's counsel understood the position of counsel for Commonwealth United Corporation, Inc. (Iota) at the pretrial conference and the Court's ruling at that time in regard to the motion to strike, the plaintiff's pleading is to be amended to excise not only reference to the action commenced against Iota by the SEC but also reference to the fact that the SEC complaint in that action charged Iota with deficiencies in the registration filings in issue in this action. If at the pretrial conference it had been made apparent that Iota contended that plaintiff should be barred from pleading any deficiencies in the S-1 registration statements filed by Iota covering the shares received pursuant to the August 20, 1968 contract as to which rescission is sought, any such contention would have been vigorously opposed. It was not opposed because it was our understanding based on the motion papers and the discussion at the conference that the above-mentioned references to the SEC were the only matters to which objection was made and, in any event, were the only matters which the Court ruled should be stricken. Under these circumstances, Mr. Hindman's concern that the appellate record upon which an adverse ruling of the forthcoming 12(b)6 motion might be

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reviewed should not contain a pleading referring either to the SEC action or to the SEC complaint was understandable. But to preclude plaintiff from pleading in the excised complaint that the S-1 registration statements prepared and filed by Iota were defective would emasculate plaintiff's case and run counter to this Court's continuing insistence that plaintiff plead with specificity the acts and omissions of Iota upon which plaintiff relies. Thus, plaintiff intends to introduce no new matter in his excised pleading but merely to reiterate those deficiencies heretofore pleaded but without reference to the facts that the SEC brought an action against Iota based on those deficiencies and cited them in its complaint.

With respect to the relief demanded by plaintiff, the inaccuracy of Mr. Hindman's statement in the second paragraph on the second page of his May 8 letter is apparent from inspection of the prayer for relief contained in the Amended Unified Complaint of August 5, 1974. Assuming the Court's adoption of the order proposed by plaintiff on May 5, 1975, paragraph 3 thereof will require that the identical prayer be set forth in the Second Amended Unified Complaint. Accurately characterized in plaintiff's memorandum as seeking "only equitable relief, principally rescission of the contract of August 20, 1968", the relief consistently demanded since plaintiff's motions of November 7, 1972 contemplates an award of the value of the Darin assets (as defined in the prayer for relief) if their actual restoration is not feasible because of supervening equities (if any are subsequently established), such as their subsequent acquisition from Iota or one of its transferees by a purchaser for value without notice of Darin's rescission claim. Why Mr. Hindman seeks to suggest that plaintiff contemplates varying the relief sought by the Amended Unified Complaint is unclear; the fact is otherwise; and to obviate further argument on the point, a copy of the prayer for relief contained in the Amended Unified Complaint is enclosed.

Finally, the passage of time since the pretrial conference does not appear to us to provide any basis for eliminating the entirely workable briefing schedule originally proposed by Mr. Hindman and incorporated in our proposed order. Without such a schedule, it is possible that greater delay may be encountered.

For the foregoing reasons, we urge that the order submitted by plaintiff on May 5 be adopted by the Court.

Respectfully,

cc: Messrs. Hindman and Greathead

of the consideration promised to Darin by CUC under said contract, which in paragraph 13.7 provides that for CUC's failure to comply with any covenant contained in said contract, in addition to all other available remedies, plaintiff is entitled to injunctive and other equitable relief, and to recovery from CUC and CUM of all loss, cost and expense (including reasonable attorneys' fees) incurred by Darin and plaintiff in securing such relief.

WHEREFORE, plaintiff prays for judgment:

1. Rescinding the contract of August 20, 1968 between defendant Commonwealth United Corporation and defendant Commonwealth United Music, Inc., on the one hand, and Darin, on the other, and directing the defendants (and any transferee of any of their interests in and to T. M. Music, Inc. and its assets, including the exclusive songwriter's contract of September 13, 1968 between Darin and Chardon Music, Inc.), upon delivery to the Court (for apportionment by the Court among the defendants and any such transferees as their interests may appear) of 77,323 shares of stock of Commonwealth United Corporation, to make full restoration to plaintiff as Darin's sole legal representative of: (i) all rights, royalties and other profits heretofore or hereafter accruing under the aforesaid exclusive songwriter's contract, (ii) the assets owned by T. M. Music, Inc. as of the time on September 13, 1968 when all of the stock thereof was transferred by Darin pursuant to the contract of August 20, 1968 and (iii) all rights, royalties and other profits accruing upon such assets since September 13, 1968 (hereinafter the rights and assets described in (i), (ii) and (iii) are referred to as the Darin Assets);

2. Enjoining each of the defendants and any transferee of an interest in any of the Darin Assets from transferring or further encumbering any of the Darin Assets;

3. Requiring an accounting of all profits derived from any of the Darin Assets by the defendants and any transferee of an interest in any of the Darin Assets;

4. If restoration to plaintiff of the Darin Assets should not be ordered, directing defendants to pay plaintiff $2,000,000 in damages; and

5. Awarding to plaintiff the costs and disbursements of this action, including an allowance for reasonable attorneys' and accountants' fees, and such other and further relief as to the Court may seem just and proper in the premises.

PATTERSON, BELKNAP & WEBB
Attorneys for Plaintiff

By _____
A Member of the Firm

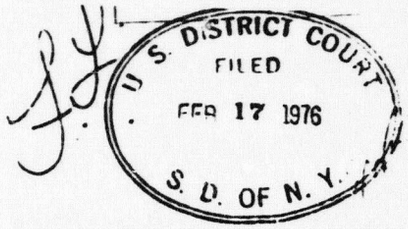
30 Rockefeller Plaza
New York, New York 10020
(212) 541-4000

New York, New York

August 5, 1974

A196

Pleadings



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALD LIPSKY, Executor under the Will of WALDEN ROBERT CASSOTTO (a/k/a BOBBY DARIN) deceased,

Plaintiff

- against -

COMMONWEALTH UNITED CORPORATION (now known as IOTA INDUSTRIES, INC.); COMMONWEALTH UNITED MUSIC, INC.; THE HUDSON BAY MUSIC COMPANY (formerly known as ALLEY-STREET MUSIC VENTURE); ALLEY MUSIC CORPORATION; and STREET SONGS, INC.,

Defendants

DOCKET NO. M-19-95
COMMONWEALTH CASES

Index No. 70 Civ. 5030

FINAL ORDER AND JUDGMENT

This Court having, by order herein dated July 11, 1975, granted motions of defendants to strike certain portions of plaintiff's Amended Unified Complaint and directed plaintiff to serve and file a Second Amended Complaint identical thereto but with said stricken portions deleted therefrom, and plaintiff having accordingly served and filed his Second Amended Unified Complaint Filed Pursuant to Pretrial Conference Order Dated July 11, 1975 (the "Second Amended Unified Complaint") to which is annexed as Exhibit A a written Agreement dated August 20, 1968, made with certain of the defendants by plaintiff's decedent, Bobby Darin ("Darin"); and

Plaintiff having limited the nature and scope of this action to a single cause of action seeking only equitable relief, i.e., rescission of said Agreement of August 20, 1968 [awarding either restoration of the Darin Assets (as defined in the Second Amended Complaint) or, if restoration thereof is not ordered, $2,000,000, the value thereof], an accounting, an injunction, and an allowance for reasonable attorneys' and accountants' fees and the costs and disbursements of this action; and

This Court having by said order dated July 11, 1975, determined that it would be in the interest of the parties and of this Court that the availability of the equitable relief demanded in the complaint, in the event plaintiff proves all the factual allegations therein, be decided first in this action, and accordingly by said order having directed defendants to serve and file a motion under Fed. R. Civ. P. 12(b)(6) to dismiss plaintiff's Second Amended Unified Complaint on the ground that said Second Amended Unified Complaint fails to state a claim upon which relief can be granted in that plaintiff cannot obtain the relief of rescission and related equitable relief demanded in said Second Amended Unified Complaint, and defendants having accordingly served and filed on August 27, 1975, motions to dismiss under said rule on said ground; and

This Court having by order and judgment entered in this docket on November 29, 1972, approved a Stipulation of Settlement in Land v. Commonwealth United Corp., 69 Civ. 3726, dated May 26, 1972, and section 4.1(d) of said Stipulation having reserved for plaintiff's decedent 10,000 shares of the common stock of defendant Iota Industries, Inc. ("Iota") in the Settlement Fund created by said Stipulation if he became a party thereto, and this Court by said order dated July 11, 1975 having further found that said 10,000 shares of Iota common stock so reserved for plaintiff's decedent remain available for distribution to plaintiff upon order of the Court, and directed that if said motion of defendants to dismiss under said rule on said ground be granted as to all defendants, this action shall be dismissed with prejudice and said 10,000 shares

of common stock of Iota reserved for plaintiff's decedent under said Stipulation shall then be transferred to plaintiff; and;

This Court having heard said motions to dismiss and the arguments of counsel on October 15, 1975, and having considered all papers submitted on said motions, and being of the opinion that said motions are due to be granted in that:

1. The Agreement dated August 20, 1968, annexed to the Second Amended Unified Complaint provided for an exchange of stock between Darin and Commonwealth United Music. Specifically Darin was to deliver to Commonwealth United Music all the outstanding stock of a corporation he controlled, T. M. Music, Inc., in exchange for certain unregistered, legended shares of stock of Commonwealth United Music's parent, defendant Iota. In the Agreement, Iota promised to file and thereafter to use its best efforts to cause to become effective at the earliest practicable time a registration statement under the Securities Act of 1933, covering said shares. It is undisputed that the exchange of shares and the filing of a registration statement occurred within the times called for by the Agreement. Plaintiff's essential charge herein is that Iota failed thereafter to use its best efforts to cause such registration statement to become effective at the earliest practicable time, and for the purposes of defendants' motion to dismiss, that charge is deemed admitted.

2. The equitable relief demanded by plaintiff in the Second Amended Unified Complaint may not be granted in that the Agreement dated August 20, 1968, as annexed

thereto, shows that the promise allegedly breached by Iota, to-wit, to use its best efforts to cause the registration statement covering plaintiff's decedent's shares of stock of Iota to become effective at the earliest practicable time, was only incidental to the exchange of stock under said Agreement and was not the essence of said Agreement and, accordingly, rescission is not an available remedy for the alleged breach of such promise;

3. The equitable relief demanded by plaintiff may not be granted in that the Second Amended Unified Complaint shows no breach by defendant Commonwealth United Music, Inc. ("CUM") of said Agreement dated August 20, 1968 and accordingly, as CUM received the stock of T. M. Music, Inc. under said Agreement, it cannot be required to disgorge such stock because of the alleged breach of the collateral promise by Iota;

4. The equitable relief demanded by plaintiff cannot be granted in that said Second Amended Unified Complaint seeks a return of assets owned by T. M. Music, Inc. at the time of said exchange of stock, and no facts are alleged therein showing any entitlement of plaintiff to such corporate assets even if rescission of the Agreement were ordered;

5. The equitable relief demanded by plaintiff cannot be granted in that the Second Amended Unified Complaint reveals that events since said exchange of stock under said Agreement have radically changed the relative values and status of the shares exchanged thereunder and of the assets once held by T. M. Music, Inc. and, accordingly, it is not posssible to restore the parties to the status quo;

6. The Second Amended Unified Complaint is fatally deficient in that it lacks allegations to show that Iota's

alleged failure to use best efforts was the cause of any injury to plaintiff's decedent;

7. Even if plaintiff were entitled to equitable relief as demanded in the Second Amended Unified Complaint against defendants Iota and CUM, said complaint is fatally deficient as to all other defendants in that it fails to show any facts entitling plaintiff to the equitable relief demanded against said other defendants.

Accordingly, it is finally ORDERED, ADJUDGED and DECREED:

1. The motions of all defendants herein to dismiss the Second Amended Unified Complaint are granted in all respects; and

2. The Second Amended Unified Complaint be and hereby is dismissed with prejudice and without costs as to all defendants; and

3. Defendant Iota Industries, Inc. shall cause to be delivered to plaintiff's counsel forthwith the 10,000 shares of common stock of Iota reserved for Darin in the Settlement Fund created by the Stipulation of Settlement dated May 26, 1972, which certificate shall be endorsed to "Gerald Lipsky as executor under the will of Walden Robert Cassotto"; and

4. The clerk is directed to enter the foregoing as a final judgment forthwith.

Done this 13th day of February, 1976.

Frank A. M. Kaufman
United States District Judge

JUDGMENT ENTERED - 2/17/76
Raymond F. Burghardt
CLERK

COPY RECEIVED
Burns, Van Kirk, Greene & Kafer

MAY 26 1976

☒ By Hand ☐ By Mail

Postmarked.....

COPY RECEIVED

MAY 26 1976

LORD, DAY & LORD

ATTORNEYS FOR Hudson Bay